Single Rulebook Q&A

Question ID	2019_4775
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Own funds
Article	84
Paragraph	1
Subparagraph	a
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	n.a.
Date of submission	12/06/2019
Published as Final Q&A	03/12/2021
Disclose name of institution / entity	No
Type of submitter	Credit institution
Subject matter	Relevance of third country capital requirements for the calculation of minority interests amounts of a subsidiary to be included at the consolidated leve
Question	When applying Article 84(1), point (a), of Regulation (EU) No 575/2013 (CRR) in respect of subsidiary institutions in third countries, should the excess capital attributable to minorities be determined by applying, namely in subparagraph (i), the provisions and requirements of CRR, together with any additional local requirements, to the extent these have to be met with CET1 capital?
Background on the question	Although the wording of Article 84(1)(a)(i) CRR seems clear, different interpretations have arisen as to how it applies in practice, particularly in the case of third country institutions operating under a regulatory framework different from CRD IV/CRR.In our view, one of the key purposes of Article 84(1) is to ensure that the amount of minority interests that is included in consolidated CET1 capital is consistent with the stated goals of the CRR (and other regulation), that is of ensuring that capital is adequately distributed within a financial group, to reflect potentially different levels of risk in different activities, markets or geographies.Such goal is stated, for example, in Recital (37) of the CRR: “In order to ensure that own funds are

appropriately distributed within the group and available to protect savings where needed, the capital requirements should apply to individual institutions within a group” and in Recital (7) “This Regulation should, inter alia, contain the prudential requirements for institutions that relate strictly to the functioning of banking and financial services markets and are meant to ensure the financial stability of the operators on those markets as well as a high level of protection of investors and depositors.”These goals are best achieved if an appropriate and homogeneous methodology (the CRR methodology) is consistently applied to determine the capital needs of each component of the group regardless of its place of incorporation, and proper incentives are in place to promote a capital allocation consistent with such needs.Moreover, and even though local requirements would in any case need to be considered if our proposed interpretation is not adopted (since non-recognition of minority interests may only occur upon specific derogation pursuant to Article 7 of CRR and, even in such case, any local requirements would need to be deemed additional requirements), in our view the CRD IV/CRR goals would not be properly pursued if regulation at the parent company level were to promote capital allocation in subsidiary institutions according to potentially less demanding local regulation (especially when minority interests at the subsidiary level might demand the higher local dividend distributions that such less demanding regulation would allow).Thus, if the regulation at parent company level fully discards the capital attributable to minorities that exceeds lower local requirements, it is effectively encouraging such higher local dividend distributions and, in certain circumstances, might lead to levels of local distribution that are not fully compensated for at the parent company level, which is clearly not a desirable outcome from a prudential standpoint.This can only be effectively avoided where capital requirements are measured in a consistent manner for each component of the group, i.e., in accordance with the common rules and requirements of the CRD IV/CRR. Bearing in mind that additional capital may be required at the local level, the CRR consistently provides that relevant CRD IV/CRR requirements may be added by any additional local requirements (i.e. these would be relevant to the extent they exceed CRD IV/CRR requirements).This view was shared by a number of institutions in the context of the consultation paper published by EBA in respect of the Draft Regulatory Technical Standards on Own Funds, and notably EBA’s Banking Stakeholder Group, which emphasized “the need that Article 84 be interpreted as recognising local prudential requirements when these are higher than the requirements at consolidated level. We think that Article 84 should be read as that the only difference in the calculation between (i) and (ii) is the elimination of intragroup positions but the minimum ratio to apply should be the higher between the consolidated and the local”
(See EBA/CP/2013/17).EBA´s answer to Q&A 2013_487 also appears to confirm the view that subsidiaries’ CET1 capital for the purposes of Article 84(1)(a) of the CRR should be calculated in accordance with CRR rules, notably Article 50 (and, therefore, not with local rules, which, as per the

	wording of the Article 84.1(a)(i) and (ii), would only be relevant when imposing additional capital requirements).
Final answer	In accordance with Article 81(1) of the CRR, minority interests (MI) are to comprise the sum of Common Equity Tier 1 (CET1) items of a subsidiary, provided that that subsidiary meets all the conditions listed in Article 81(1), points (a) to (c), of the CRR. Such a subsidiary could also be located in a third country if it falls under the CRR definition of institution or investment firm, as clarified in Q&A 2021_5711. The amount of minority interests of a subsidiary that is eligible for inclusion in the consolidated CET1 capital of a banking group is determined in accordance with Article 84 of the CRR. The calculation set out in Article 84 of the CRR can be summarised by the following formula: $$MI_{eligible} = MI_{total} - [(CET1_{sub} - min\{CET1^{r}_{sub}; CET1^{c}_{sub}\}) \cdot mi]$$ where $MI_{eligible}$ = the amount of minority interests of a subsidiary that can be included in consolidated CET1 capital in accordance with Article 84 of the CRR; MI_{total} = the total minority interest of the subsidiary calculated in accordance with Article 81 of the CRR; $CET1_{sub}$ = the total amount of CET1 capital of the subsidiary; $CET1^{r}_{sub}$ = the amount calculated in accordance with Article 84(1), point (a)(i), of the CRR; $CET1^{c}_{sub}$ = the amount calculated in accordance with Article 84(1), point (a)(ii), of the CRR; *mi* = the percentage calculated in accordance with Article 84(1), point (b), of the CRR. In order to calculate the excess capital of a subsidiary, the amounts mentioned in Article 84(1), points (a)(i) and (a)(ii), have to be determined first. Subsequently, the lower amount is deducted from the CET1 capital of the subsidiary. If the subsidiary is located in a third country, the relevant requirements to determine the amount under Article 84(1), point (a)(i), of the CRR are the applicable local requirements insofar as those requirements are to be met by

	CET1 capital. Where the third-country subsidiary is not subject to any local requirements expressed in terms of CET1 capital, the amount determined under Article 84(1), point (a)(i), of the CRR, is equal to zero. In other words, that amount has to be calculated based on actual local requirements rather than on hypothetical CRR requirements. Therefore, in the absence of such a local requirement, the relevant amount cannot be calculated based on the CRR rules. Indeed, if the third-country subsidiary is not subject to relevant CET1 binding requirements, its minority interests are not eligible for inclusion in the consolidated CET1 capital of a banking group. This is consistent with the logic underlying Article 84(3) of the CRR, according to which minority interests cannot be recognised if no prudential requirements are applied on an individual basis to the subsidiary. **Disclaimer:** 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 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.
Link	https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2019_4775