

EBA/RTS/2021/04

15 April 2021

Final report

Draft Regulatory Technical Standards on the methods of prudential consolidation under Article 18 of Regulation (EU) No 575/2013 (Capital Requirements Regulation - CRR)

Contents

1. Executive summary	3
2. Background and rationale	5
3. Draft regulatory technical standards	11
4. Accompanying documents	24
4.1 Draft cost-benefit analysis / impact assessment	24
4.2 Feedback on the public consultation	29

1. Executive summary

The EBA has developed these draft Regulatory Technical Standards (RTS) in accordance with the mandate in Article 18(9) of Regulation (EU) No 575/2013¹ (Capital Requirements Regulation – CRR) pursuant to which the ‘EBA shall develop draft regulatory technical standards to specify conditions in accordance with which consolidation shall be carried out in the cases referred to in paragraphs 3 to 6 and paragraph 8’ of Article 18 of the CRR.

The current regulatory framework in terms of scope and the methods of prudential consolidation is derived from the CRR, in particular Articles 11 and 18. The entities to be included in the scope of prudential consolidation pursuant to Article 18 of the CRR are institutions, financial institutions (as defined in point 26 of Article 4(1) of the CRR) and ancillary services undertakings (as defined in point 18 of Article 4(1) of the CRR). Moreover, Article 18(8) of the CRR allows competent authorities to require full or proportional consolidation in the case of certain undertakings² that are not institutions, financial institutions or ancillary services undertakings, where there is a substantial risk of step-in and provided that they are not (re)insurance undertakings.

Compared to the draft RTS proposed in the Consultation Paper, these final draft RTS have taken on board the amendments brought to the CRR by the Risk Reduction Measures (RRM) package adopted by the European legislators.

These draft RTS elaborate on some criteria/indicators and some conditions for the application of different methods of consolidation (full consolidation, proportional consolidation, aggregation method) or the application of the equity method in the following cases:

- Use of the aggregation method for undertakings managed on a unified basis pursuant to a contract, memorandum or articles of association, or undertakings whose administrative, management or supervisory bodies consist in the majority of the same persons in office (Article 18(3) of the CRR);
- Use of proportional consolidation where participations held in institutions, financial institutions or ancillary services undertakings are managed together with other non-consolidated undertakings (Article 18(4) of the CRR);
- Whether and how consolidation shall be carried out in some specific cases of participations or capital ties (Article 18(5) of the CRR);

¹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

² I.e. Subsidiaries or undertakings in which an institution holds a participation.

- Whether and how consolidation shall be carried out in cases of significant influence without holding a participation or other capital ties and of single management other than pursuant to a contract, memorandum or articles of association (Article 18(6) of the CRR);
- In the case of subsidiaries or participations in undertakings that are not institutions, financial institutions or ancillary services undertakings, when there is a substantial risk of step-in (Article 18(8) of the CRR).

In this context, the Basel Committee on Banking Supervision (BCBS) has published Guidelines on identification and management of step-in risk³. According to the BCBS Guidelines, 'step-in risk' is the risk that a bank decides to provide financial support to an unconsolidated entity that is facing stress, in the absence of, or in excess of, any contractual obligations to provide such support. The BCBS Guidelines include several indicators that banks should use in order to identify entities bearing step-in risk. In line with the BCBS Guidelines, these final draft RTS include several indicators that should be assessed by institutions in order to identify which undertakings can lead to step-in risk. Competent authorities shall, in particular, consider these indicators in order to conclude whether the entities included under the scope of prudential consolidation pursuant to Article 18 of the CRR should be fully consolidated, proportionally consolidated or follow the rules of the CRR for holdings of capital instruments of financial sector entities. Moreover, competent authorities can consider other measures to address the potential risk stemming from these undertakings under the supervisory review and evaluation processes (SREP).

³ <https://www.bis.org/bcbs/publ/d423.htm>.

2. Background and rationale

The EBA has developed these final draft Regulatory Technical Standards (RTS) in accordance with the mandate in Article 18(9) of Regulation (EU) No 575/2013 (Capital Requirements Regulation – CRR)⁴, pursuant to which the EBA shall develop draft regulatory technical standards to specify conditions in accordance with which consolidation shall be carried out in the cases referred to in paragraphs 3 to 6 and in paragraph 8 of Article 18 of the CRR.

Moreover, the EBA has taken into consideration the work of the Basel Committee on Banking Supervision (BCBS) on the identification and management of step-in risk, as well as the amendments to the CRR on this specific aspect.

The main changes brought to the CRR via the RRM package⁵ have led to some adjustments to the final RTS compared to the provisions included in the Consultation Paper. In particular, Article 18 of the CRR has been amended on the following main aspects:

- (a) The provision originally included in paragraph 2 of Article 18 of the CRR, allowing competent authorities to permit, under certain circumstances, the proportional consolidation of subsidiaries on a case by case basis has been removed. In addition, a new paragraph 2 has been included in order to prescribe the inclusion of ancillary services undertakings in the scope of prudential consolidation in accordance with the methods laid down in Article 18 of the CRR;
- (b) Paragraph 7 of Article 18 has been amended in order to regulate the treatment of subsidiaries and participations in undertakings, which are excluded from the scope of prudential consolidation since they are different from institutions, financial institutions and ancillary services undertakings;
- (c) Paragraph 8 of Article 18 has been amended in order to allow competent authorities to require full or proportional consolidation in the case of subsidiaries or undertakings in which an institution holds a participation that are not institutions, financial institutions, or ancillary services undertakings, where there is a substantial risk of step-in and provided that they are not (re)insurance undertakings;
- (d) The mandate to develop these RTS has been moved to paragraph 9 of Article 18 and revised in order to cover the cases referred to in paragraphs 3 to 6 and 8 of Article 18.

As mentioned above, the amendments brought to Article 18 in the Level 1 text have led to some changes to the final text of the draft RTS (which are explained more in detail in the feedback section

⁴ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

⁵ See Regulation (EU) 2019/876 of 20 May 2019 (CRR2), amending Regulation (EU) No 575/2013 (<https://data.consilium.europa.eu/doc/document/ST-6288-2019-INIT/en/pdf>).

of this document). That said, these changes are not significant and do not introduce any substantially new aspect. In this regard, it is worth recalling that, inter alia, the list of elements to be used by the competent authority for the purpose of the step-in risk assessment was already presented in the consultation paper on the draft RTS.

2.1 Background and regulatory approach followed in the draft RTS

Criteria and conditions for the use of the different methods of consolidation

The current regulatory framework in terms of scope and methods of prudential consolidation is enshrined in the CRR, in particular in Articles 11 and 18.

The entities to be included in the scope of prudential consolidation pursuant to Article 18 of the CRR are institutions, financial institutions (as defined in point (26) of Article 4(1) of the CRR) and ancillary services undertakings (as defined in point (18) of Article 4(1) of the CRR).

Unless a prudential waiver has been granted⁶, the CRR and the CRD apply to institutions on an individual and a consolidated basis, and the general rule for the preparation of their consolidated situation for prudential purposes is full consolidation. In particular, pursuant to Article 18(1) of the CRR, for prudential consolidation purposes, ‘institutions, financial holding companies and mixed financial holding companies that are required to comply with the requirements [...] on the basis of their consolidated situation’ (see Article 11 et seq.) shall fully consolidate all institutions, financial institutions and ancillary services undertakings that are their subsidiaries.

Moreover, according to Article 18(3), (5) and (6) of the CRR, the competent authorities shall determine the method of consolidation applicable in cases of relationships other than those covered in paragraph 1 of Article 18 of the CRR. Furthermore, Article 18(4) of the CRR requires the application of the method of proportional consolidation under specific circumstances.

More specifically, Article 18(3) of the CRR refers to undertakings managed on a unified basis pursuant to a contract, memorandum or articles of association; or undertakings whose administrative, management or supervisory bodies consist of the majority of the same persons in office during the financial year and until the consolidated financial statements are drawn up. In this case, the draft RTS determine that the method of consolidation should be that provided for in Article 22(8) and (9) of Directive 2013/34/EU (aggregation method).

Proportional consolidation is required under Article 18(4) of the CRR where participations held in institutions, financial institutions or ancillary services undertakings are managed together with other non-consolidated undertakings. However, the liability of each undertaking is limited to the share of the capital they hold, so that the institution will provide support proportionately to its share of the

⁶ For instance, Article 7 of the CRR provides for a waiver of solo prudential requirements (own funds, capital requirements, large exposures, exposures to transferred credit risk, leverage, disclosure by institutions) to subsidiaries established within the same Member State as their parent institutions granted on a case-by-case basis by the competent authority.

capital only. The draft RTS specify that the conditions set out in this paragraph are met in cases of joint arrangements as defined by IFRS 11 *Joint arrangements* (IFRS 11).⁷

It is worth noting that, in this case, the application of proportional consolidation for the purpose of prudential consolidation may differ from the approach for financial accounting. Specifically, according to IFRS 11 (applicable from 1 January 2014) a joint venturer shall recognise its interest in a joint venture using the equity method.⁸

However, for prudential purposes there are several reasons to require the use of the proportional method of consolidation:

- It allows the risks of the entities managed together to be reflected and promotes an integrated approach to risk management by requiring a detailed assessment via a 'look through' approach of the underlying assets, liabilities and off-balance-sheet positions of the undertakings;
- As the liability to these undertakings is limited to the share of capital held, it addresses the prudential risks related to the contractual exposures consistently;
- As these undertakings may have similar risk profiles to institutions (for which the current prudential framework was designed), proportional consolidation could appropriately capture these risks; and
- A common approach to the treatment of these participations increases comparability when the accounting standards may provide room for judgement (e.g. assessment of joint arrangements for their classification as joint operations – which are proportionally consolidated – or joint ventures, which are accounted for using the equity method).

Article 18(5) of the CRR deals with participations or capital ties other than those referred to in Article 18(1) and (4) of the CRR. The draft RTS define the circumstances under which consolidation should be required by the relevant competent authority and the way in which the undertaking should be integrated into the consolidated situation of the parent (meaning, for example, full or proportional consolidation) or, alternatively, where the application of the equity method should be considered appropriate.

Article 18(6)(a) and (b) of the CRR deal, respectively, with the discretion for competent authorities to require prudential consolidation in the case of significant influence without a participation or other capital ties, and in the case of single management other than pursuant to a contract, memorandum or articles of association. The draft RTS describe how significant influence can be assessed and the method of prudential consolidation. Moreover, the draft RTS set forth the indicators that may lead to the conclusion that two or more institutions or financial institutions are placed under single

⁷ Commission Regulation (EU) No 1254/2012 of 11 December 2012 amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Standard 10, International Financial Reporting Standard 11, International Financial Reporting Standard 12, International Accounting Standard 27 (2011), and International Accounting Standard 28 (2011).

⁸ IFRS 11 also includes an exemption for the application of the equity method in certain cases.

management. When two or more institutions or financial institutions are placed under single management the aggregation method, as proposed for the application of Article 18(3) of the CRR, should be applied.

Finally, Article 18(8) of the CRR allows competent authorities to require full or proportional consolidation of subsidiaries or undertakings in which an institution holds a participation that are not institutions, financial institutions, or ancillary services undertakings, where there is a substantial step-in risk and provided that they are not (re)insurance undertakings. These RTS define the elements to be taken into consideration by competent authorities when assessing, on a case by case basis, whether a substantial risk of step-in occurs.

Other frameworks that should be considered in the context of the draft RTS: Step-in risk and limits on exposures to shadow banking entities

The Basel Committee on Banking Supervision (BCBS) has published Guidelines on identification and management of step-in risk⁹. According to the BCBS Guidelines, 'step-in risk' is the risk that a bank decides to provide financial support to an unconsolidated entity that is facing stress, in the absence of, or in excess of, any contractual obligations to provide such support. The main reason for accepting step-in risk might be to avoid the reputational risk that a bank might face if it does not provide support to a related entity facing stress. The BCBS Guidelines include several indicators that banks should use in order to identify entities giving rise to step-in risk for the bank. The objective of the BCBS Guidelines is to identify only those instances where step-in risk would significantly impact the bank's liquidity and/or capital positions. The BCBS Guidelines focus on the situations that give rise to step-in risk, rather than trying to provide a list of entities that should be included. Nevertheless, at a minimum, according to the BCBS Guidelines, banks are expected to scrutinise securitisation vehicles, investment funds and the other entities which are described in the Guidelines.

Considering the above-mentioned work as well as the amendments to the CRR, and building on the initial proposals in the Consultation Paper, these final draft RTS include several indicators that should be assessed by institutions when identifying which undertakings can actually lead to step-in risk. Competent authorities shall also consider these indicators to conclude whether the entities included under the scope of prudential consolidation pursuant to Article 18 of the CRR should be fully consolidated, proportionally consolidated or follow the rules of the CRR for holdings of capital instruments of financial sector entities.

Institutions should also consider the potential risk to which they are exposed towards these undertakings and consider it under their internal capital adequacy assessment process (ICAAP). Additionally, competent authorities can consider other measures to address the potential risks from these undertakings under the supervisory review and evaluation processes (SREP). Given the mandate envisaged in Article 18 of the CRR, the draft RTS have a more limited scope than the BCBS Guidelines as they cover Pillar I measures and, therefore, do not expand on the possible measures to be taken by the institutions and the competent authorities as part of the ICAAP and SREP. Moreover, the draft RTS do not cover all entities that may give rise to step-in risk. Indeed, whilst after the amendments

⁹ <https://www.bis.org/bcbs/publ/d423.htm>.

introduced by the Risk Reduction Measures (RRM) package, competent authorities are allowed, pursuant to Article 18(8) of the CRR, to require full or proportional consolidation based on a step-in risk assessment in the case of undertakings that are not institutions, financial institutions or ancillary services undertakings, such a provision is applicable only for subsidiaries or undertakings in which the institution holds a participation. This could result in the exclusion from the step-in risk assessment of certain entities (such as certain types of special purpose vehicles) that do not qualify as subsidiaries according to the CRR definition or are not linked to the banking group by a participation, whilst they may still give rise to a risk of step-in.

The EBA has also issued Guidelines on limits on exposures to shadow banking entities, which specify the methodology that should be used by institutions to set limits, as part of their internal processes, on their individual and aggregate exposures to shadow banking entities.¹⁰ The Guidelines should be read in conjunction with these draft RTS.

EBA Opinion and Report on other financial intermediaries and regulatory perimeter issues

The EBA has published an Opinion and a Report on the prudential treatment of other financial intermediaries (OFIs) and regulatory perimeter issues¹¹, which provides a summary of issues identified by the competent authorities in the application of the definition of financial institution and ancillary services undertaking. The OFI Opinion and Report highlight that there is currently some diversity regarding the application of these definitions and recommend further clarifications.

EBA Opinion on elements of the definition of credit institution under Article 4(1), point 1, letter (a) of Regulation (EU) No 575/2013 and on aspects of the scope of the authorisation

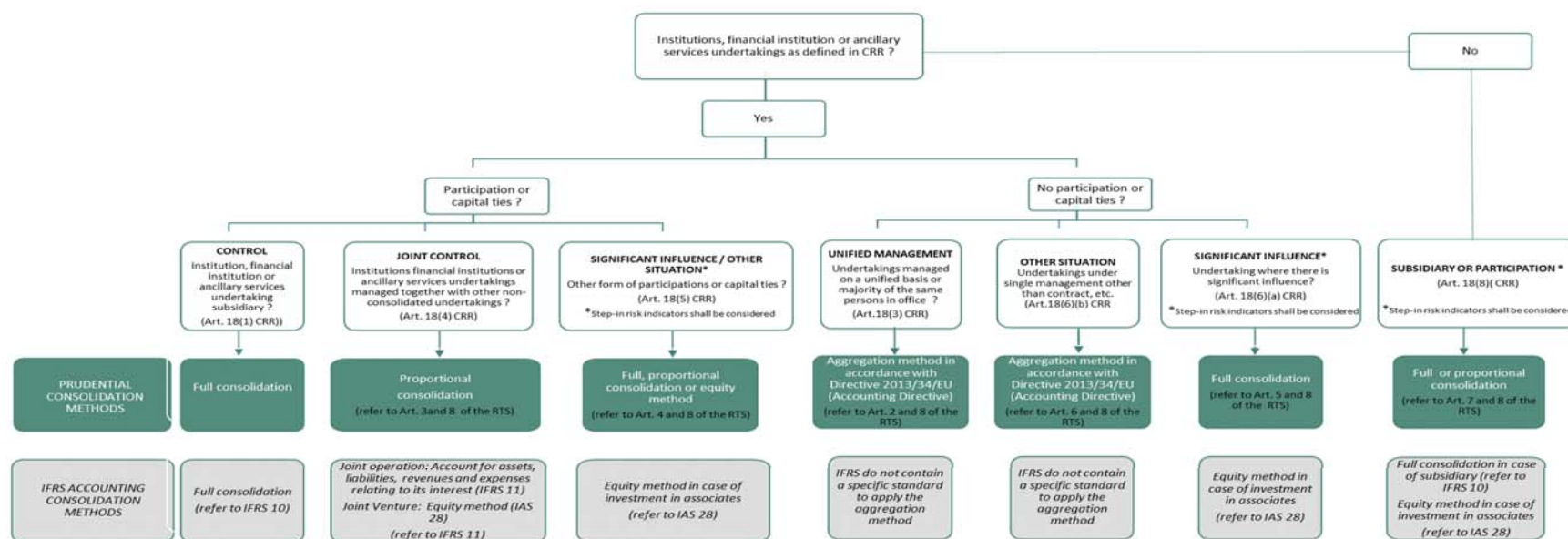
The EBA has published an Opinion on elements of the definition of credit institution under Article 4(1) point 1, letter (a) of the CRR¹² in order to raise awareness of the opportunity for clarifying certain issues relating to this definition in the upcoming review of the Capital Requirements Regulation (CRR) and Capital Requirements Directive (CRD). In particular, the Opinion highlights that the application of divergent interpretations of the notion of a credit institution have been observed across the European Union. These varied interpretations, which depend on national implementations, as well as a lack of clarity and potential inconsistencies in the relevant provisions of CRR and of the CRD, affect the uniform application of EU law and the convergence of supervisory practices.

¹⁰ EBA Guidelines on limits on exposures to shadow banking entities which carry out banking-like activities outside a regulated framework under Article 395(2) of Regulation (EU) No 575/2013, EBA/GL/2015/20, 14 December 2015.

¹¹ <https://www.eba.europa.eu/-/eba-publishes-an-opinion-and-report-on-regulatory-perimeter-issues-relating-to-the-crd-div-crr>

¹² https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Opinions/2020/931784/EBA%20Opinion%20on%20elements%20of%20the%20definition%20of%20credit%20institution.pdf

Figure explaining the possible alternatives covered in these draft RTS¹³



¹³ Compared to the table published by the EBA in the Consultation Paper, this figure has been revised in order to take into account the amendments to Article 18 of the CRR introduced as part of the RRM package, with specific reference to:

- The removal of the provision originally included in paragraph 2 of Article 18 of the CRR, allowing competent authorities to permit, under certain circumstances, the proportional consolidation of subsidiaries; and
- The provisions stated in Article 18(8) of the CRR, according to which competent authorities may require full or proportional consolidation in the case of undertakings in subsidiaries or in which a participation is held, which are not institutions, financial institutions or ancillary services undertakings, where there is a substantial risk of step-in.

3. Draft regulatory technical standards

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[...]

supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards to specify conditions according to which consolidation shall be carried out in the cases referred to in Article 18(3) to (6) and (8) of that Regulation.

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 642/2012¹⁴, and in particular Article 18(9) thereof,

Whereas:

- (1) Article 18(3) of Regulation (EU) No 575/2013 covers cases of prudential consolidation of groups of undertakings that are related to each other within the meaning of Article 22(7) of Directive 2013/34/EU of the European Parliament and of the Council¹⁵ where a parent-subsidiary relationship does not exist. The absence of a parent-subsidiary relationship creates the need to determine the entity at which level the requirements of that Regulation should be applied on a consolidated basis in such cases. Moreover, in those cases, the most appropriate method of prudential consolidation should be the method set out in paragraphs 8 and 9 of Article 22 of Directive 2013/34/EU ('aggregation method') in line with the rules specified in that Directive.
- (2) In cases of participations in institutions or financial institutions managed by an undertaking included in the consolidation together with one or more undertakings not included in the consolidation where proportional consolidation is required pursuant Article 18(4) of Regulation (EU) No 575/2013, the unanimous consent of those undertakings concerning the decisions about the institution's or financial institution's relevant activities should be required for the application of that method of prudential

¹⁴ OJ L 176, 27.6.2013, p.1.

¹⁵ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

- consolidation in line with the definition of joint arrangement specified in the international accounting standards as applicable under Regulation (EC) No 1606/2002¹⁶.
- (3) Points (a) and (b) of Article 18(6) of Regulation (EU) No 575/2013 refer to the supervisory requirements for prudential consolidation in the case of significant influence over one or more institutions or financial institutions but without participation or other capital ties, and in the case where those institutions or financial institutions are placed under single management other than pursuant to a contract, memorandum or articles of association, respectively. To enable competent authorities to determine whether a situation of significant influence exists, several indicators of significant influence should be taken into account by those authorities. Moreover, a situation of single management should only be determined where the competent authority has concrete evidence that there is an effective coordination of the financial and operating policies of such institutions or financial institutions. Such situation would not be expected to occur in case of institutions, financial institutions or ancillary services undertakings controlled by a Member State's central, regional or local government unless there is evidence to the contrary.
- (4) The Basel Committee on Banking Supervision (BCBS) has published Guidelines on identification and management of step-in risk¹⁷ which include several indicators that should be used by institutions in identifying which entities can give rise to step-in risk. According to the BCBS Guidelines, 'step-in risk' is the risk that a bank decides to provide financial support to an unconsolidated entity (i.e. not fully or proportionately consolidated) that is facing stress, in the absence of, or in excess of, any contractual obligations to provide such support. Pursuant to the BCBS Guidelines, when a bank identifies that there is significant step-in risk, it needs to determine the appropriate measures based on the nature and extent of the anticipated step-in support in each case. These measures encompass, among others, also the inclusion of the entities concerned in the regulatory scope of consolidation. In line with the BCBS Guidelines, several indicators should be considered by institutions and competent authorities to conclude whether certain undertakings should be fully or proportionally consolidated pursuant to Article 18(5), (6)(a) or (8) of Regulation (EU) No 575/2013, as applicable, taking into account the risk of step-in these undertakings may pose to an institution. Nevertheless, institutions should also consider alternative measures to address step-in risk under their risk management procedures and internal capital adequacy assessment process (ICAAP). In addition, competent authorities may consider other measures to address the potential risk posed by those undertakings under the supervisory review and evaluation processes (SREP). In the context of the large exposures framework, the EBA has also issued guidelines on limits on exposures to shadow banking entities which carry out banking-like activities outside a regulatory framework, which specify the methodology that should be used by institutions to set limits, as part of their internal processes, on their individual and aggregate exposures to shadow banking entities.
- (5) In particular, in order to determine whether full or proportional consolidation is needed pursuant to Article 18(8) of Regulation (EU) No 575/2013 in the case of subsidiaries or undertakings in which an institution holds a participation where that subsidiary or

¹⁶ Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p.1).

¹⁷ Guidelines of the Basel Committee on Banking Supervision on the identification and management of step-in risk, Basel, October 2017.

- undertaking is not an institution, financial institution or ancillary services undertaking, and where there is a substantial risk of step-in and provided that the undertaking is not an insurance or reinsurance undertaking, or an insurance holding undertaking, among others, competent authorities would be expected to scrutinise, at a minimum, certain categories of undertakings such as special purpose entities that do not qualify as securitisation special purpose entities as defined in point (2) of Article 2 of Regulation (EU) 2017/2402¹⁸ for which the conditions for the transfer of significant credit risk established in Article 244 of Regulation (EU) No 575/2013 are applicable, as well as those undertakings performing any of the activities referred to in point (b) of Article 89(1) of Regulation (EU) No 575/2013.
- (6) In order to ensure consistency with the own funds framework under Regulation (EU) No 575/2013 and to avoid the recognition of undue capital benefits, in those cases where consolidation is required pursuant to Article 18(3) to (6) or (8) of Regulation (EU) No 575/2013 the inclusion in the consolidated own funds of the amounts of Common Equity Tier 1 items and of the Additional Tier 1 and Tier 2 capital instruments issued by the undertakings included in the prudential scope of consolidation and owned by persons other than such undertakings, as well as the related share premium accounts, should also be based on the provisions established in Articles 81 to 88 of that Regulation.
 - (7) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority.
 - (8) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010¹⁹,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:

- (1) ‘relevant activities’ means relevant activities as defined in Appendix A to the Annex to Commission Regulation (EC) 1254/2012 (‘Annex relating to IFRS 10’);

¹⁸ Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p.35).

¹⁹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

- (2) ‘risk mitigants’ means any applicable laws, regulations, rules or contractual arrangements that restrict an institution’s ability to provide financial support to an undertaking in stressed conditions;
- (3) ‘participating undertakings’ means the undertakings that jointly control any of the following:
- (a) an institution or financial institution as referred to in Article 3(1) of this Regulation, or;
 - (b) an undertaking which is not an institution, financial institution or ancillary services undertaking as referred to in point (a) of Article 7(3) of this Regulation.
- (4) ‘capital ties’ means the ownership, direct or indirect, of capital of an undertaking, including a participation as defined in Article 4(1)(35) of Regulation (EU) No 575/2013.
- (5) ‘significant influence’ means the power to participate in the financial and operating policy decisions of an undertaking, where that undertaking does not qualify as a subsidiary as defined in point (16) of Article 4(1) of Regulation (EU) No 575/2013 and is not jointly controlled as referred to in Article 3(1) or in point (a) of Article 7(3) of this Regulation.

Article 2

Conditions for the consolidation in the case of groups of undertakings that are related to each other within the meaning of Article 22(7) of Directive 2013/34/EU

1. Where, in the case of groups of undertakings that are related to each other within the meaning of Article 22(7) of Directive 2013/34/EU, consolidation is required pursuant to Article 18(3) of Regulation (EU) No 575/2013, the following entity shall be responsible for ensuring compliance with the requirements referred to in Section 1 of Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013 on the basis of the consolidated situation of all undertakings of the group:
 - (a) the institution, where there is only one institution within the group;
 - (b) the credit institution with the largest balance sheet total, where there are several credit institutions within the group;
 - (c) the investment firm subject to Regulation (EU) No 575/2013 with the largest balance sheet total, where the group does not include any credit institution.
2. For the purposes of paragraph 1, the balance sheet total shall be calculated on the basis of the latest audited consolidated financial statements or, where consolidated financial

statements are not required to be prepared in accordance with the applicable accounting framework, the latest audited individual financial statement of the institution.

3. In particular cases, the competent authorities responsible for exercising supervision on a consolidated basis pursuant to Article 111(4) to (6) of Directive 2013/36/EU may waive the criteria referred to in paragraph 1, and designate another entity within the group subject to Regulation (EU) No 575/2013 as responsible for ensuring compliance with the requirements referred to in Section 1 of Chapter 2 of Title II of Part One of that Regulation on the basis of the consolidation situation of all undertakings of the group, where the application of the criteria referred to in paragraph 1 would be inappropriate. For these purposes, those competent authorities shall take into account any decision taken in accordance with Article 111(6) of Directive 2013/36/EU or, in the absence of such decision, the institutions concerned and the relative importance of their activities in the relevant Member States or whether they are required to prepare consolidated financial statements for the group in the cases referred to in Article 22(7) of Directive 2013/34/EU. In such cases, the institution with the largest balance sheet total shall have the right to be heard, before the competent authorities take the decision.
4. In the cases referred to in this Article, the competent authorities responsible for exercising supervision on a consolidated basis pursuant to Article 111(4) to (6) of Directive 2013/36/EU shall permit or require the use of the method of consolidation provided for in Article 22(8) and (9) of Directive 2013/34/EU
5. An undertaking that is related to one or more undertakings within the meaning of Article 22(7) of Directive 2013/34/EU need not to be included in the consolidation pursuant to this Article in the same cases and in accordance with the same conditions as set out in Article 19 of Regulation (EU) No 575/2013.

Article 3

Conditions for the consolidation in the case of institutions or financial institutions managed by an undertaking included in the consolidation together with one or more undertakings not included in the consolidation

1. In the case of participations in institutions or financial institutions managed by an undertaking included in the consolidation together with one or more undertakings not included in the consolidation, the consolidating supervisor shall require proportional consolidation pursuant to Article 18(4) of Regulation (EU) No 575/2013, where all of the following conditions are met:
 - (a) the participating undertakings jointly control a majority of the shareholders' or members' voting rights in the institution or financial institution concerned or have the ability to direct jointly that institution's or financial institution's relevant activities, pursuant to a legally enforceable contractual arrangement between them or to clauses of the institution's or financial institution's memoranda or articles of association;

- (b) the decisions about the institution's or financial institution's relevant activities require the unanimous consent of all the participating undertakings;
 - (c) the contractual arrangement referred to in point (a) of this paragraph or the clauses of the institution's or financial institution's memoranda or articles of association stipulate that the liability of the participating undertakings is limited to the share of capital they hold in the institution or financial institution concerned.
2. In the cases referred to in this Article, proportional consolidation shall be carried out on the basis of the share of capital held in the concerned institution or financial institution and in accordance with Article 26(2) of Directive 2013/34/EU.

Article 4

Conditions for the consolidation in the case of participations or capital ties in institutions or financial institutions other than those referred to Articles 18(1) and (4) of Regulation (EU) No 575/2013

1. In the case of participations or capital ties in institutions or financial institutions other than those referred to Articles 18(1) and (4) of Regulation (EU) No 575/2013, competent authorities may determine whether consolidation is to be carried out and, in such a case, permit or require the use of the equity method pursuant to Article 18(5) of Regulation (EU) No 575/2013 unless they determine the proportional or full consolidation of the institution or financial institution concerned to be required in accordance with the conditions set out in paragraphs 2 to 5 of this Article.
2. The competent authority shall make the determination referred to in paragraph 1 on the basis of an assessment of the risks posed by the institution or financial institution concerned to the institution, taking into account the extent and the effectiveness of any risk mitigants and the impact on the prudential requirements of the institution on a consolidated basis that could result from the application of full or proportional consolidation.
3. For the purposes of the assessment referred to in paragraph 2, the institution shall provide the competent authority, upon request, with all necessary information in particular with regard to the following elements:
 - (a) the overall ownership structure of the institution or financial institution concerned, having regard, in particular, to whether shares or equivalent ownership rights and voting rights, including potential voting rights as referred to in Article 5(5), are distributed across a large number of shareholders, owners or members, or the institution is the main shareholder, owner or member of the institution or financial institution;
 - (b) whether the institution acts as sponsor by managing or advising the institution or financial institution concerned, placing the institution's or financial institution's securities into the market, or providing liquidity and or credit enhancements to the institution or financial institution, or whether the institution is an important investor in its debt or equity instruments, or there is other contractual and non-contractual

involvement exposing the institution to the risks or to equity-like returns from the assets of the institution or financial institution concerned or related to its performance;

- (c) whether the institution is effectively involved in the decision-making process of the institution or financial institution concerned, the degree to which the institution exercises influence over it, or whether the institution or financial institution is considered to be controlled in accordance with the applicable accounting framework;
 - (d) whether the institution receives critical operational services from the institution or financial institution concerned which cannot be replaced in a timely fashion without excessive cost;
 - (e) whether the credit rating of the institution or financial institution concerned is based on the institution's own rating;
 - (f) whether specific features relating to the composition of the investor base of the institution or financial institution concerned exist, with particular reference to whether the other investors in the institution or financial institution have a close commercial relationship with the institution, their ability to bear losses or their ability to dispose of their financial instruments;
 - (g) whether the institution or financial institution concerned and the institution have a common customer base or are involved in the commercialisation of each other's products;
 - (h) whether the institution and the institution or financial institution concerned have the same brand;
 - (i) whether the institution has already provided financial support to the institution or financial institution concerned in case of financial difficulties.
4. Competent authorities may in particular require proportional consolidation of the institution or financial institution referred to in paragraph 1 according to the share of capital held in that undertaking where there is a contractual agreement between the institution and one or more shareholders, owners or members of the institution or financial institution concerned to jointly provide financial support to the institution or financial institution or there is strong evidence that they would financially support the institution or financial institution according to the share of capital held in it.
5. Competent authorities may, in particular, require full consolidation of the institution or financial institution referred to in paragraph 1 where, as a consequence of the organizational and financial relationships between the institution and the institution or financial institution concerned, the institution is exposed to the majority of the risks and/or the benefits arising from the relevant activities of that institution or financial institution.

Article 5

Conditions for the consolidation in cases where an institution exercises a significant influence over one or more institutions or financial institutions but without holding a participation or other capital ties in those institutions

1. Where an institution exercises a significant influence over one or more institutions or financial institutions but without holding a participation or other capital ties in those institutions, competent authorities may determine the full consolidation of the institutions or financial institutions concerned pursuant to point (a) of Article 18(6) of Regulation (EU) No 575/2013, on the basis of an assessment of the risks posed by those institutions or financial institutions to the institution exercising the significant influence, taking into account the extent and the effectiveness of any risk mitigants and the impact on the prudential requirements of that institution on a consolidated basis that could result from the application of full consolidation.
2. For the purposes of the assessment referred to in paragraph 1, the institution shall provide the competent authority, upon request, with all necessary information, in particular with regard to the elements referred to in points (a) to (i) of Article 4(3).
3. Competent authorities may, in particular, require full consolidation of the institutions or financial institutions referred to in paragraph 1 where, as a consequence of the organizational and financial relationships between the institution exercising the significance influence and the institutions or financial institutions concerned, the institution is exposed to the majority of the risks and/or the benefits arising from the relevant activities of those institutions or financial institutions.
4. For the purposes of the application of this Article, elements to be taken as indications of significant influence shall include the following:
 - (a) the institution has appointed or has the right to appoint a member of the administrative, management or supervisory body of the institution or financial institution concerned;
 - (b) the institution is effectively involved in the decision-making process of the institution or financial institution concerned, including in decisions about dividends and other distributions;
 - (c) existence of material transactions with the institution or financial institution concerned;
 - (d) the institution has exchanged managerial personnel with the institution or financial institution concerned;
 - (e) the institution provides essential technical information or critical services to the institution or financial institution concerned;

- (f) the institution has additional rights in the institution or financial institution concerned, pursuant to a contract, clauses of their memoranda or articles of association that could affect the management or the decision-making process of that institution or financial institution;
5. The existence of share warrants, share call options, debt instruments that are convertible into ordinary shares or other similar instruments that are currently exercisable or convertible and have the potential, if exercised or converted, to give the institution voting power or to reduce another party's voting power over the financial and operating policies of the institution or financial institution concerned shall also be considered in the assessment of significant influence.

Article 6

Conditions for the consolidation in cases where two or more institutions or financial institutions are placed under single management other than pursuant to a contract, clauses of their memoranda or articles of association

1. A competent authority shall determine the consolidation of two or more institutions or financial institutions that are placed under single management other than pursuant to a contract, clauses of their memoranda or articles of association for the purposes of point (b) of Article 18(6) of Regulation (EU) No 575/2013, where the following conditions are met:
 - (a) the competent authority has carried out an assessment aimed at verifying that the institutions' or financial institutions' financial and operating policies are effectively coordinated; and
 - (b) the institutions or financial institutions concerned are not related within the meaning of Article 22(1), (2) and (7)(b) of Directive 2013/34/EU.
2. For the purpose of point (a) of paragraph 1, competent authorities may, in particular, take into account the following elements as indications of the existence of the situation referred to in that point:
 - (a) the institutions or financial institutions concerned are controlled directly or indirectly, by the same natural person or persons, or by the same entity or entities;
 - (b) a majority of the members of the institutions' or financial institutions' administrative, management or supervisory body consists of persons appointed by the same natural person or persons or by the same entity or entities, even if those members do not consist of the same persons.
3. In the cases referred to in this Article, competent authorities shall permit or require the use of the method of consolidation provided for in Article 22(8) and (9) of Directive 2013/34/EU.

4. Article 2(1) to (3) shall apply for the purposes of determining the entity responsible for ensuring compliance with the requirements referred to in Section 1 of Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013 on the basis of the consolidation situation of all institutions and financial institutions referred to in paragraph 1.

Article 7

Conditions for the consolidation in cases where a subsidiary or an undertaking in which an institution holds a participation is not an institution, financial institution or ancillary services undertaking

1. A competent authority may require the full or proportional consolidation of a subsidiary or an undertaking in which an institution holds a participation where that subsidiary or undertaking is not an institution, financial institution or ancillary services undertaking pursuant to Article 18(8) of Regulation (EU) No 575/2013 provided that it carries out an assessment that verifies that the condition set out in point (b) of Article 18(8) of Regulation (EU) No 575/2013 is being met. For these purposes, paragraphs 2 and 3 of Article 4 shall apply.
2. Competent authorities may in particular require full consolidation of the subsidiary or undertaking referred to in paragraph 1 where, as a consequence of the organizational and financial relationships between the institution and the subsidiary or undertaking concerned, the institution is exposed to the majority of the risks and/or the benefits arising from the relevant activities of that subsidiary or undertaking.
3. Competent authorities may in particular require proportional consolidation of an undertaking referred to in paragraph 1 according to the share of capital held in that undertaking where either of the following conditions is met:
 - (a) the undertaking is jointly controlled by the institution together with one or more undertakings not included in the consolidation pursuant to a legally enforceable contractual arrangement between them or to clauses of the undertaking's memoranda or articles of association and the decisions about the undertaking's relevant activities require the unanimous consent of all the participating undertakings;
 - (b) there is a contractual agreement between the institution and one or more shareholders, owners or members of the undertaking to jointly provide financial support to that undertaking or there is strong evidence that they would financially support the undertaking according to the share of capital held in it.

Article 8

Conditions for the inclusion in consolidated Common Equity Tier 1, Additional Tier 1 and Tier 2 capital of instruments owned by persons other than the undertakings included in the prudential scope of consolidation

1. In cases where the method of consolidation provided for in Article 22(8) and (9) of Directive 2013/34/EU is used pursuant to Articles 18(3) or (6)(b) of Regulation (EU) No 575/2013, an institution may include the Common Equity Tier 1 items and Additional Tier 1 and Tier 2 capital instruments and the related share premium accounts of the undertakings included in the prudential scope of consolidation which are owned by persons other than those undertakings, in consolidated Common Equity Tier 1, Additional Tier 1 and Tier 2 capital provided that those capital items are available to cover the losses of all the undertakings included in the consolidation.

Where the Common Equity Tier 1 items and the Additional Tier 1 and Tier 2 capital instruments and the related share premium accounts referred to in the first subparagraph, are not available to cover the losses of all the undertakings included in the prudential scope of consolidation, the institution shall determine the amount of the Common Equity Tier 1 items and of the Additional Tier 1 and Tier 2 capital instruments and the related share premium accounts to be included in consolidated Common Tier 1, Additional Tier 1 and Tier 2 capital in accordance with Articles 81 to 88 of Regulation (EU) No 575/2013.

2. For the purposes of applying paragraph 1, the Common Equity Tier 1 items and the Additional Tier 1 and Tier 2 capital instruments and the related share premium accounts referred to in the first subparagraph of paragraph 1 which are owned by the person or persons or the entity or entities which manage the undertakings on a unified basis pursuant to Article 18(3) of Regulation (EU) No 575/2013 or exercise single management over the undertakings pursuant to point (b) of Article 18(6) of that Regulation, shall be deemed to be available to cover the losses of all the undertakings included in the prudential scope of consolidation.
3. In cases where full consolidation is required pursuant to Articles 18(5), (6)(a) or (8) of Regulation (EU) No 575/2013, the institution shall determine the amount of Common Equity Tier 1 items and of the Additional Tier 1 and Tier 2 capital instruments and the related share premium accounts of the undertakings included in the prudential scope of consolidation which are owned by persons other than those undertakings, to be included in consolidated Common Equity Tier 1, Additional Tier 1 and Tier 2 capital in accordance with Articles 81 to 88 of Regulation (EU) No 575/2013. For these purposes, the undertakings for which full consolidation is required shall be considered to be subsidiaries.
4. In cases where proportional consolidation is required pursuant to Articles 18(4), (5) or (8) of Regulation (EU) No 575/2013, institutions shall determine the amount of Additional Tier 1 and Tier 2 capital instruments issued by the undertakings proportionally included in the prudential scope of consolidation which are owned by persons other than those undertakings as well as the related share premium accounts, to be included in consolidated Additional

Tier 1 and Tier 2 capital in accordance with Articles 82, 83, and 85 to 88 of Regulation (EU) No 575/2013.

5. For the only purposes of the application of paragraph 4, the following shall apply:
- (a) the undertakings for which proportional consolidation is required shall be considered to be subsidiaries;
 - (b) references to the full inclusion in the consolidation pursuant to Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013 shall be construed as references to the proportional inclusion in the consolidation pursuant to Articles 18(4), (5) or (8) of that Regulation; and
 - (c) the amounts referred to in Articles 82, 83 and 85 to 88 of Regulation (EU) No 575/2013 shall be determined taking into account the share of capital held by the institution in those undertakings.

Article 9

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President

[Position]

4. Accompanying documents

4.1 Draft cost-benefit analysis / impact assessment

Article 10(1) of the EBA Regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council) provides that when any draft regulatory technical standards developed by the EBA are submitted to the European Commission for adoption, they should be accompanied by an analysis of ‘the potential related costs and benefits’. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options. To this end, this section provides an impact assessment (IA) of the draft RTS. It includes an overview of the existing problem, which the draft RTS deal with, the options proposed for resolving the problem as well as the potential impact of these options.

A. Problem identification

The EBA has developed these draft RTS on the methods of prudential consolidation, in accordance with the mandate in Article 18(9) of the CRR to specify the conditions according to which consolidation shall be carried out in the cases referred to in paragraphs 3 to 6 and in paragraph 8 of Article 18 of the CRR.

To recall, Article 18 of the CRR establishes the methods of prudential consolidation of institutions (as defined in point (3) of Article 4(1) of the CRR), financial institutions (as defined in point (26) of Article 4(1) of the CRR) and ancillary services undertakings (as defined in point (18) of Article 4(1) of the CRR). Moreover, following the amendments introduced as part of the RRM package, paragraph 8 of Article 18 of the CRR allows competent authorities to require full or proportional consolidation in the case of subsidiaries or undertakings in which an institution holds a participation that are not institutions, financial institutions or ancillary services undertakings, where there is a substantial risk of step-in, and provided that they are not (re)insurance undertakings.

The application of the appropriate method of consolidation ensures that institutions, financial institutions and ancillary services undertakings are subject to the application of CRR requirements on a consolidated basis. An inappropriate method of consolidation or the exclusion from the consolidation of some of these undertakings may hide or under-represent the risk that these undertakings pose to the group. In addition, the variety of practices arising from the application of Article 18 of the CRR results in the adoption of various methods of consolidation in different member states of the EU.

Moreover, in some cases, institutions may also have incentives beyond their contractual obligations to step in and provide financial support to an unconsolidated undertaking that faces stressed financial conditions. This could happen to avoid any kind of reputational risk that the institution may suffer from the failure or default of the undertaking under stress.

In 2016, the EBA carried out a survey across Member States on the application of Article 18 of the CRR. Overall, Member States follow the accounting treatment for prudential purposes. However, the survey identified some differences such as:

- i. the application of proportional consolidation for undertakings accounted under the equity method for accounting purposes; and
- ii. the application of full consolidation for prudential purposes when the institution is exposed, in substance, to the majority of the risk and/or the benefits arising from the activities of the undertaking in question.

The EBA performed a follow-up of this stock-take in some Member States²⁰ and confirmed that, overall, the proposed draft RTS will not have a significant impact across EU institutions on the methods of consolidation currently applied or on the monetary impact that these non-significant changes may imply. Likewise, following a high-level qualitative assessment, this impact assessment concludes that the marginal changes in the conditions implemented in the RTS imply a negligible impact. In addition, methods of consolidation may change over time for some particular types of entities in some jurisdictions. However, there was no evidence as to the extent and the impact of these changes and thus, it was not possible to provide an accurate quantitative estimation of the impact arising from all provisions introduced in these draft RTS. Nonetheless, the opinion of the national experts revealed that, at this stage, the impact would be negligible. Some of the possible sources of impact (although of unknown magnitude) are the following:

- Cases of the proportional consolidation of joint ventures for which the equity method is applied under IFRS 11.
- Cases where banks apply proportional consolidation of participations in institutions or financial institutions based on Article 18(5) of the CRR, which was an alternative to the accounting treatment (the equity method). These draft RTS limit this option to certain instances and provide the national competent authorities with the discretion to require a certain method of consolidation.
- Some implications from the step-in risk assessment cannot be excluded, depending on the case-by-case assessments performed by the national competent authorities. For example, the stocktaking exercise revealed a case of an institution that had a participation of approximately 40% of the capital of a financial institution, and provided guarantees to it, where this involvement did not lead to prudential consolidation. These draft RTS introduce the possibility of requiring consolidation in such cases.

B. Policy objectives

The high-level strategic objective of these draft RTS is to further enhance the stability of the banking system and contribute to a high, effective, and consistent level of banking regulation across the EU.

²⁰ Member States: AT, BE, BG, DE, ES, HR, HU, IT, LU, NL.

Moreover, these draft RTS aim at ensuring consistency in the calculation of capital requirements for EU institutions and thus enhancing the harmonisation and level playing field of EU banking supervision.

At operational level, these draft RTS aim at providing clarity to institutions regarding the application of various methods of consolidation and ensuring the appropriate recognition of risks on a consolidated basis.

In addition, these draft RTS aim at allowing a certain degree of flexibility to determine the appropriate prudential treatment depending on the specific circumstances of the institutions, financial institutions and ancillary services undertakings concerned and the information provided by these undertakings to their competent authority.

C. Baseline scenario

The current EU legislative framework (i.e. status quo without the proposed regulatory intervention in these RTS) does not provide guidance on the application of different methods of consolidation and the aspects to be considered by competent authorities when deciding the appropriate prudential response to the requirements included in Article 18 of the CRR. This could lead to the application of different methods of prudential consolidation (or differences in the exclusion of entities from prudential consolidation) across institutions and member states.

D. Options considered

The draft RTS consider a number of policy options as shown below:

D1. Application of the method of consolidation according to Article 22(8) and (9) of Directive 2013/34/EC (the aggregation method)

Option 1.1: Include a reference to the Accounting Directive and avoid providing any further guidance ('baseline scenario').

Option 1.2: Provide guidance on different aspects of the application of this method.

D2. Consideration of the BCBS Guidelines on identification and management of step-in risk

Option 2.1: No introduction of the BCBS Guidelines in the EU legal framework ('baseline scenario');

Option 2.2: Introduction of the BCBS Guidelines in the draft RTS;

Option 2.3: Introduction of some aspects of the BCBS Guidelines in the draft RTS.

E. Cost-Benefit Analysis

D1. Application of the method of consolidation according to Article 22(8) and (9) of Directive 2013/34/EC ('the aggregation method')

Option 1.1: Include a reference to the Accounting Directive and avoid providing any further guidance ('baseline' scenario).

Under this option, the draft RTS would only include a reference to the application of the method of consolidation in accordance with Article 22(8) and (9) of Directive 2013/34/EC when Article 18(3) and (6) applies, in line with the CRR. This implies that competent authorities and institutions would benefit from retaining the full flexibility they currently have, as to the decision of the appropriate method for their jurisdiction. In addition, by retaining this approach, there are no additional operational costs. On the other hand, the lack of guidance on the application of this method, beyond what it is in the Accounting Directive, may result in the application of different practices across the EU and thus to increased costs of home-host cooperation.

Option 1.2: Provide guidance on different aspects of the application of this method.

This option involves the provision of guidance that would enhance the establishment of a level playing field amongst institutions and contribute to a harmonised application of the rules included in the CRR. In this regard, these draft RTS could provide some clarity on issues such as identifying the consolidating entity, or the treatment of CET1, AT1 and T2 capital owned by natural or legal entities other than undertakings included in the prudential scope of consolidation. However, the application of this option may result in changes in the current prudential treatment of institutions, where the application of the currently used method is not consistent with the draft RTS. This implies some additional costs that, nonetheless, are expected to be negligible according to the opinions of the national experts.

Preferred option

The current RTS retain Option 1.2 as it provides clarity on some issues where the Accounting Directive does not provide guidance.

D2. Introduction of the BCBS Guidelines on identification and management of step-in risk

The BCBS has published Guidelines on the identification and management of step-in risk²¹, including several indicators that banks should use for identifying entities bearing step-in risk for the bank. The objective is to identify only those instances where step-in risk would significantly impact the bank's liquidity and/or capital positions. It should be mentioned that the scope of the BCBS Guidelines is broader than the scope of these draft RTS since it includes all entities that may give rise to step-in risk. In this regard, it is worth noting that, whilst after the amendments introduced by the Risk Reduction Measures (RRM) package, competent authorities are allowed, pursuant to Article 18(8) of the CRR, to require full or proportional consolidation based on a step-in risk assessment in the case of undertakings that are not institutions, financial institutions or ancillary services undertakings, such a provision is applicable only to subsidiaries or undertakings in which the institution holds a participation. This could result in the exclusion from the step-in risk assessment of certain entities (for instance certain types of special purpose vehicles) that do not qualify as subsidiaries according to the CRR definition or are not linked to the banking group by a participation, whilst they may still give rise to a risk of step-in.

²¹ <https://www.bis.org/bcbs/publ/d423.htm>.

As a next step, when the bank identifies the existence of significant step-in risk, according to the BCBS Guidelines, it needs to determine appropriate measures based on the nature and extent of the anticipated step-in support in each case. An indicative, but not exhaustive, list of such measures could be: inclusion in the regulatory scope of consolidation, the application of a conversion factor, additional liquidity requirements, punitive ex-post capital charges, and/or large exposure-like internal limits. These measures would be applicable either independently or in combination. Institutions will need to report their self-assessment of step-in risk to the competent authority on a periodic basis.

The banks' assessment of step-in risk would be under the scrutiny of the competent authority that may take action if it considers that an institution has not assessed and, subsequently, has not taken the appropriate measures to address step-in risk.

When deciding on the appropriate policy option, the EBA has taken into consideration the following aspects:

- i. The BCBS Guidelines follow a Pillar II approach and provide certain flexibility on the measure to be applied (such as conversion factors or other measures). Article 18 of the CRR mandates the response to step-in risk through the confines of the prudential methods of consolidation.
- ii. The BCBS Guidelines envisage the assessment of 'step-in' risk by the relevant institution, which is then scrutinised by the competent authority. However, in the CRR, the competent authority shall determine the appropriate method of consolidation.

Option 2.1. No introduction of the BCBS Guidelines in the EU legal framework ('baseline' scenario)

Under this option, the draft RTS would not address step-in risk as in the BCBS Guidelines and, therefore, the draft RTS would not include any reference to these Guidelines.

This option would not require any change to the current practices applied by the institutions and financial institutions or by the competent authorities, since it would not require the assessment of step-in indicators included in these draft RTS to assess the appropriateness of the method of consolidation.

On the other hand, this option would be detrimental for the level playing field, as it would not encourage the introduction of the BCBS Guidelines on step-in risk. As the step-in risk would not be recognised, the draft RTS would not address cases of implicit support through specific prudential measures even if there are indications that an institution supports an unconsolidated entity.

Option 2.2. Introduction of the BCBS Guidelines in the draft RTS

Under this option, the draft RTS would include the content of the BCBS Guidelines as a Pillar I requirement.

According to the assessment of the EBA Staff, this option would be the most comprehensive as it would allow the draft RTS to introduce the BCBS Guidelines in the EU legal framework and, at the same time, would contribute to the level playing field. This option would require covering, in the draft RTS, other aspects than those that refer only to the application of the different methods of consolidation where the step-in risk indicators are present.

This option will not provide enough flexibility to competent authorities as, in certain circumstances, it may be most suitable to apply Pillar II rather than Pillar I measures. Since the BCBS provisions for step-in risk require the use of significant judgment, they may not always be the best approach and may result in elevated operational costs.

Option 2.3. Introduction of some aspects of the BCBS Guidelines in the draft RTS

Under this option, the draft RTS would include only some elements of the BCBS Guidelines. In particular, it would address those elements under the confines of the methods of consolidation.

This option would enforce the implementation of the BCBS Guidelines on step-in risk at EU level and, at the same time, provide a certain flexibility in an area that is highly judgemental. It would also allow competent authorities to decide whether to consolidate the undertakings concerned or whether it would be better to address step-in risk through other measures. Moreover, such an approach would be in line with the spirit of the recent amendments introduced in Article 18(8) of the CRR, with the aim of allowing competent authorities to extend, based on step-in risk considerations, prudential consolidation to certain undertakings that do not qualify as institutions, financial institutions or ancillary services undertakings.

However, this option would not allow a full convergence of practices across institutions and Member States, which would imply costs for cooperation between home and host competent authorities that follow different approaches.

Preferred option

These RTS retain Option 2.3 as it allows, to a certain extent, the implementation of the BCBS Guidelines on step-in risk while still providing some flexibility to address the individualities of step-in risk in certain jurisdictions.

Moreover, to address the differences in the scope of application of the BCBS Guidelines, the recitals of the draft RTS include some references to enable institutions and competent authorities to consider the step-in risk under the internal capital adequacy assessment process (ICAAP) and the supervisory review and evaluation processes (SREP), as well as assess whether additional measures are needed. In addition, in the BCBS Guidelines, the assessment of step-in risk is carried out by the bank, which is then scrutinised by the competent authority. To address this difference between the BCBS Guidelines and draft RTS, the latter include a reference to the need for institutions to provide, upon request of the competent authority, the initial assessment performed on step-in risk, which then shall be considered by the competent authority for the purpose of assessing whether to require prudential consolidation.

Overall, the objective is to ensure consistency between the draft RTS and the BCBS Guidelines, being mindful that the draft RTS are narrower in their scope to cover step-in risk.

4.2 Feedback on the public consultation

The EBA publicly consulted on the draft technical standards.

The consultation period lasted for 3 months and ended on 9 February 2018. Twelve responses were received, of which eight were published on the EBA website.

This paper presents a summary of the key points and other comments arising from the consultation and the analysis and discussion triggered by these comments, and the actions taken to address them if deemed necessary.

In many cases, several industry bodies made similar comments, or the same body repeated its comments in its response to different questions. In such cases, the comments and the EBA analysis are included in the section of this paper where the EBA considers them most appropriate.

Changes to the draft technical standards have been incorporated as a result of the responses received during the public consultation.

In addition, the amendments brought by the RRM package to Article 18 of the CRR have influenced the final provisions of these RTS as well as the answers brought to some comments received (some of them are no longer relevant due to the changes in Level 1 provisions).

Summary of key issues and the EBA's response

Main changes introduced in Article 18 of the CRR

Following the adoption of the 'Risk Reduction Measures Package' by European legislators in May 2019, Regulation (EU) No 2019/876 of the European Parliament and of the Council²² has amended the prudential requirements on the methods of prudential consolidation established in Article 18 of the CRR in different aspects, including, inter alia, the following:

- (a) The provision originally included in paragraph 2 of Article 18 of the CRR, allowing competent authorities to permit, under certain circumstances, the proportional consolidation of subsidiaries, on a case by case basis has been removed. In addition, a new paragraph 2 has been included in order to prescribe the inclusion of ancillary services undertakings in the scope of prudential consolidation in accordance with the methods laid down in Article 18 of the CRR.
- (b) Paragraph 7 of Article 18 has been amended in order to regulate the treatment of subsidiaries and participations in undertakings, which are excluded from the scope of prudential consolidation since they are different from institutions, financial institutions and ancillary services undertakings.
- (c) Paragraph 8 of Article 18 has been amended in order to allow competent authorities to require full or proportional consolidation in the case of subsidiaries or undertakings in which an institution holds a participation that are not institutions, financial institutions or ancillary

²² Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150, 7.6.2019, p. 1).

services undertakings, where there is a substantial risk of step-in, and provided that they are not (re)insurance undertakings.

- (d) The mandate to develop these RTS has been moved to paragraph 9 of Article 18 and revised in order to cover the cases referred to in paragraphs 3 to 6 and 8 of Article 18.

Changes to these draft technical standards have been incorporated as a result of the amendments introduced in Article 18 of the CRR.

Treatment of insurance undertakings

Some respondents asked for clarification as to whether institutions should use the equity method for insurance undertakings. In this regard, it is worth pointing out that, as already mentioned above, following the changes introduced in the CRR as part of the RRM package, Article 18(7) has been amended in order to regulate the treatment of subsidiaries and participations in undertakings, which are excluded from the scope of prudential consolidation since they are different from institutions, financial institutions and ancillary services undertakings. In addition, the revised version of Article 18(9) of the CRR clarifies that the provisions of paragraph 7 of Article 18 are outside the scope of the mandate of these RTS.

These draft technical standards have been revised in order to take into consideration the abovementioned amendments introduced through the RRM package, meaning that the corresponding provisions, originally included in the consultation paper, have been removed from the final draft RTS.

Step-in risk assessment

Several respondents raised concerns about relying on the criteria developed by the BCBS for the identification and measurement of step-in risk in these RTS, mainly arguing that:

- the step-in risk framework has been developed by the BCBS as Pillar 2 guidance, therefore its inclusion in a Pillar 1 regulation through the RTS is not considered appropriate;
- the need for additional requirements for step-in risk is questionable since reputational risk is already captured under the Pillar 2 framework.

Against this backdrop, even though the BCBS Guidelines for the identification and measurement of step-in risk have been developed in the context of the Pillar 2 framework, they envisage regulatory consolidation as one of the potential responses to step-in risk. In addition, following the amendments introduced as part of the RRM package, the assessment of step-in risk is now indicated in Article 18(8) of the CRR, as an aspect to be considered by competent authorities in assessing whether to require the application of full or proportional consolidation. In the light of this, the EBA believes that the approach undertaken in developing these RTS is also consistent with the spirit of the amendments introduced in the Level 1 text, as part of the RRM package, and that it is appropriate to include in the RTS those elements of the BCBS Guidelines that can be addressed under the confines of the methods of consolidation. In addition, competent authorities can consider other measures to address the

potential risk from unconsolidated undertakings under the supervisory review and evaluation processes (SREP).

Application of the aggregation method

Several respondents supported the proposal to apply the 'aggregation method' in the cases referred into paragraph 3 and paragraph 6(b) of Article 18 of the CRR. However, some of them pointed out that the criteria for determining the consolidating entity in the case of application of the aggregation method provided in the draft RTS may raise interpretation issues for mutual banking groups and may be inconsistent with the provisions established in the national regulations for accounting purposes. In this regard, it is already envisaged that the competent authority, in determining the consolidating entity, may waive the general criteria established in these RTS, based on an assessment of different factors, including, inter alia, the peculiarities of the institutions concerned and the relative importance of their activities in the relevant Member States or whether they are required to prepare consolidated financial statements for the group in those cases referred to in Article 22(7) of Directive 2013/34/EU (Accounting Directive). Finally, for the sake of completeness, it is worth pointing out that Article 10 and 11 of the CRR already include specific provisions for the treatment of those credit institutions that are permanently affiliated to a central body. In particular, according to Article 11(5) of the CRR, the central body shall comply with the requirements of Parts Two to Eight of Regulation (EU) No 575/2013 on the basis of the consolidated situation of the whole as constituted by the central body together with its affiliated institutions.

Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments			
Scope of the RTS	<p>Several comments were received on the scope of application of the draft RTS. Two respondents stressed the fact that the EBA mandate is confined to the specification of the method of prudential consolidation and cannot be used to expand the scope of prudential consolidation beyond banks, financial institutions and ancillary services undertakings. On the other hand, another respondent highlighted the need to revise and clarify the definitions for financial institutions and ancillary services undertakings, as these are prone to different interpretations. The same respondent suggested, however, that this should be done through a different consultation process. A fourth respondent argued that financial service undertakings such as payment systems, securities settlement systems, central counterparties, trade repositories, regulated markets, data reporting services providers, index providers, market operators and rating agencies as defined in the relevant sectorial regulations, should be excluded from the scope of prudential consolidation. Finally, another respondent argued for the inclusion in the scope of prudential consolidation of operating lease entities when the leasing activity is conducted as</p>	<p>Whereas Article 11 CRR requires the set-up of prudential consolidation and Articles 18 to 23 CRR pertain to the determination of the scope of prudential consolidation, Article 18 CRR determines only the methods of prudential consolidation. In this context, the draft RTS are not intended to broaden the type of entities that can be included in the scope of prudential consolidation, with respect to the Level 1 text and without prejudice to the application of the provisions of Article 18(8) of the CRR.</p> <p>The EBA also acknowledges the need for additional clarifications of the definition of financial institution in Article 4(1)(26) of the CRR and of ancillary services undertakings in Article 4(1)(18) of the CRR as already expressed in the EBA Opinion on other financial intermediaries and regulatory perimeter issues: <i>'Financial institution' (the definition of which cross-refers to points (2) to (12) and (15) of Annex I to the CRDIV) and 'ancillary services undertaking' are crucial terms in the CRR, in particular for the purposes of establishing the entities that must or may be consolidated within a banking group pursuant to Article 18 CRR. The EBA observes that these terms, as set out in points (26) and (18) of Article 4(1) of the</i></p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>part of the banking group's product offering, as an activity supporting and complementing the main activity of the group.</p>	<p><i>CRR, are prone to inconsistent interpretation across the EU, thereby resulting in possible inconsistencies in the way the consolidation rules under Article 18 CRR are applied. Indeed, this has been confirmed by the fact that these terms have been subject to a number of Q&As addressed via the Single Rulebook Q&A Tool managed by the EBA</i>. These clarifications are not, however, within the mandate of these draft RTS. Further clarifications on the concept of activities ancillary to banking will be provided in the guidelines that the EBA is mandated to develop pursuant to Article 89(4) of the CRR.</p> <p>As regards the treatment of operational lease entities, the EBA notes that, according to the EBA Q&A 2014_1644, an entity that exclusively carries out operational leasing cannot be considered as a financial institution and shall not be included in the prudential consolidated situation. This is without prejudice to those cases where the provisions of paragraph 8 of Article 18 of the CRR introduced by Regulation (EU) 2019/876 apply and in the opinion of the competent authority full or proportional consolidation would be justified by the occurrence of a substantial risk of step-in. In addition, this does not prevent an entity that, in addition to operational leasing activities, carries out other activities listed in Annex I points (2) to (12) and (15) of the CRDIV from being defined as a financial institution and included in the scope of prudential consolidation.</p>	

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<p>Differences between accounting and prudential scope of consolidation</p>	<p>One respondent argued that the scope of accounting consolidation cannot be used as a justification to expand the prudential scope of consolidation and any unnecessary difference between the two frameworks in terms of methods of consolidation should be avoided. Moreover, it was noted that the draft RTS should also refer to national GAAPs and not only to IFRS. Another respondent argued that when the accounting and prudential scope of consolidation differ, the institutions should have the right to choose between two methods:</p> <ol style="list-style-type: none"> (1) Consolidation/deconsolidation according to the accounting standards (i.e. including the elimination/de-elimination of any interim profit from transactions between the involved parties); or (2) Eliminating/adding back the payables/receivables between the parties and netting/adding back the corresponding participation/equity positions (regulatory aggregation/subtraction method to be defined in the EBA RTS). 	<p>A deviation from the accounting framework in relation to the methods of consolidation is envisaged in the RTS only in specific circumstances. In particular, this happens only when required by the Level 1 legislation (as, for instance, in the case of application of Article 18(4) or 18(8) of the CRR) or when it is justified by the risks (arising from the activities of the undertaking) to which the institution is exposed.</p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Inconsistencies with the CRR	<p>One respondent noted possible inconsistencies between the draft RTS and the CRR. In particular, in the respondent's view, Recital 2 of the draft RTS makes reference to undertakings while it should be restricted to institutions and financial institutions. The same respondent also notes that the language of Recital 9 of the draft RTS makes reference to the fact that the RTS allow competent authorities to apply proportional consolidation beyond the cases listed under Article 18(4) of the CRR and that it is not clear whether this is in line with the CRR.</p>	<p>Recital 2 presented in the Consultation Paper of the draft RTS dealt with the provision originally included in Article 18(2) of the CRR, allowing competent authorities to permit, under certain circumstances, the proportional consolidation of subsidiaries, on a case by case basis. As a part of the changes introduced following the approval of the Risk Reduction Measure (RRM) Package, this provision has been removed and Article 18 (2) of the CRR has been amended, in order to prescribe the inclusion of ancillary services undertakings in the scope of prudential consolidation in accordance with the methods laid down in this Article. In addition, the mandate related to the development of these draft RTS has been amended, by removing Article 18(2) from the scope of the RTS. The draft RTS have been revised accordingly.</p> <p>With reference to Recital 9 of the Consultation Paper, it should be noted that Article 18(5) and (6) of the CRR allow competent authorities to determine whether and how prudential consolidation should be carried out, without excluding the application of proportional consolidation beyond the situations covered by Article 18(4) of the CRR. Moreover, Article 18 (8) of the CRR, as amended by Regulation (EU) 2019/876, explicitly envisages the possibility for competent authorities to require proportional consolidation, on the basis of an assessment of step-in risk, even beyond the cases listed under Article 18(4) of the CRR.</p>	<p>The original version of Recital 2 has been deleted.</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		This view is reflected in the current Recital 4 of these draft RTS.	
Responses to questions in Consultation Paper EBA/CP/2017/20			
<p>Question 1.</p> <p>Are there undertakings which do not comply with the definition of a financial institution or ancillary services undertaking of Regulation (EU) 575/2013 which should be included in the prudential scope of consolidation? Please explain and provide examples of these entities.</p>	<p>Three respondents agreed with the opinion published by the EBA on matters relating to other financial intermediaries and regulatory perimeter issues (OP/2017/13) requesting further clarification on the types of entities that may be included within the definition of a ‘financial institution’ and an ‘ancillary services undertaking’. These respondents would like to see a common understanding of the above-mentioned terms ensured. This should, in the respondents’ view, help to avoid introducing further complexity in the prudential consolidation rules.</p>	<p>The EBA agrees with the need for additional clarification of the definitions in Article 4 of the CRR for terms such as ‘financial institution’ or ‘ancillary services undertaking’. However, this would require a Level 1 legislative text amendment and therefore cannot be undertaken in the context or under the mandate of these RTS. Further clarifications on the concept of activities ancillary to banking will be provided in the guidelines that the EBA is mandated to develop pursuant to Article 89(4) of the CRR.</p>	None.
	<p>With regard to which undertakings should be included in the prudential scope of consolidation, two respondents cited undertakings conducting operating lease activities as part of the group’s product offering, as an activity supporting and complementing the main activity of the banking group. In the same vein, another respondent named Central Securities Depositories (CSD).</p> <p>On the other hand, two respondents commented that, in their view, there are no undertakings which do not comply with the definition of a financial institution or ancillary services undertaking of</p>	<p>The draft RTS are not intended to broaden the type of entities that can be included in the scope of prudential consolidation, apart from the cases where it is envisaged by the Level 1 text. The EBA has acknowledged the need for additional clarification of the definition of a financial institution in Article 4(1)(26) of the CRR and of an ancillary services undertaking in Article 4(1)(18) of the CRR. Further clarifications on the concept of activities ancillary to banking will be provided in the guidelines that EBA is mandated to develop pursuant to Article 89(4) of the CRR.</p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	Regulation (EU) 575/2013 which should be included in the prudential scope of consolidation. Another respondent also noted that in its opinion no other entities should be included in the prudential scope of consolidation.		
	More specifically, one respondent argued against including vehicles owning real estate acquired as a result of credit operations and managed on an arm's-length basis, often by expert managers hired in by the bank in order to recover the loan value within the regulatory scope of consolidation. According to this response, it may be simpler and more effective to simply risk weight the amount of the bank's capital at risk, similar to the approach for venture capital investments in Article 128 of the CRR.	The definition of an 'ancillary services undertaking' in accordance with Article 4(1)(18) includes the term 'owning or managing property' or a 'similar activity which is ancillary to the principal activity of one or more institutions'. The EBA will reflect on the opportunity to provide further clarifications on this aspect and in general on those activities that are ancillary to banking as part of the guidelines that shall be issued pursuant to Article 89 (4) of the CRR.	None.
	One respondent mentioned that asset management companies are not considered in the current draft RTS and thus asked the EBA to validate its approach against the background of Article 18(8) of the CRR.	Asset management companies are already included in the definition of a financial institution according to Article 4(1)(26) of the CRR and do not need to be specifically covered by the RTS, since they are clearly to be included in the prudential scope of consolidation, like any financial institution.	None.
<p>Question 2.</p> <p>Do you consider SSPEs financial institutions? When SSPEs are consolidated for accounting purposes, do you also</p>	One respondent argued that the notion of significant risk transfer (SRT) should not interfere with the scope of the prudential consolidation perimeter, because SRT would need to be considered as a measure of risk for solvency	As regards the treatment of those vehicles used to set up securitisations in the context of prudential consolidation, in the EBA's view, a distinction shall be made between:	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<p>consolidate them for prudential purposes? Please differentiate in your answer between the situation when SRT is met and when it is not met (the institution originates the securitisation); and when the institution acts as an investor on the securitisation vehicle (whether this is a SSPEs or a special purpose entity used to set up securitisations) or sponsors the securitisation transaction.</p>	<p>purposes rather than as an indicator for the inclusion in the prudential consolidation perimeter.</p> <p>In the same vein, another respondent asked the EBA to clarify that it will not interfere with the securitisation rules based on the principle of risk transfer. In particular, the same respondent pointed out that consolidating certain special purpose entities and the capital requirements for their assets would override the application of the securitisation framework without making the treatment of these assets better aligned with the actual risk involved.</p> <p>Five respondents argued for classifying SSPEs and single-purpose entities (SPV-Sec) as neither ‘financial institutions’ within the meaning of Article 4(1)(26) of the CRR, nor as ‘ancillary services undertakings’ within the meaning of Article 4(1)(18) of the CRR, because the term ‘carrying out a securitisation’ is not included in these definitions. As a consequence, they do not consolidate SSPEs and SPV-Secs for prudential purposes, even when the latter are consolidated for accounting purposes. In particular, one of these respondents explained that the definition of ‘SSPE’ can, in its view, be applied only in cases of traditional securitisations (within the meaning of Article 244(2) of the CRR, where the bank is the originator and has achieved and continues to achieve SRT) or asset-backed</p>	<p>A. Those vehicles that qualify as ‘securitisation special purpose entities’ (SSPE) according to Article 2(2) of Regulation (EU) 2017/2402; and</p> <p>B. Other special purpose vehicles that are used to set up securitisations but do not qualify as ‘securitisation special purpose entities’ according to Article 2(2) of Regulation (EU) 2017/2402 (hereafter ‘SPV-SEC’).</p>	<p>A. Securitisation special purpose entities (SSPEs)</p>
		<p>According to the EBA Q&A 2014_1530, SSPEs should not be considered as financial sector entities and, as such, they are excluded from the scope of regulatory consolidation, unless the provisions of Article 18(8) of the CRR apply and in the opinion of the competent authority full or proportional consolidation would be justified by the occurrence of a substantial risk of step-in. However, in the EBA’s view, in the specific case of SSPEs, the application of the criteria for significant risk transfer (SRT) established in Article 244 of the CRR would already mitigate the occurrence of a substantial risk of step-in. Therefore, for those SSPEs for which the SRT criteria are applicable, regulatory consolidation would not be considered appropriate and any residual risk of step-in may be covered by the application of the provisions of the</p>	

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>commercial paper programmes where the bank fulfils the role of sponsor.</p> <p>In contrast, one respondent suggested considering SSPEs as financial institutions because for prudential purposes the respondent would generally consolidate all undertakings over which the group exercises control (as defined in the accounting standards), to the extent that the undertakings invest in financial assets. The same respondent also argued, however, that in the securitisation framework the significant risk transfer (SRT) drives the consolidation treatment of SSPE. For instance, when a bank originates a traditional securitisation transaction and SRT is achieved, risk-weighted assets are computed on the retained exposures to the SSPE and not on the SSPE underlying assets. In effect, this would be equivalent to non-consolidating the SSPE.</p> <p>In the same vein, another respondent sought to consider SSPEs which are structured for liquidity purposes as financial institutions. The same respondent, however, noted that the competent authority did not share this view and required the application of the equity method.</p> <p>Finally, other two respondents pointed out that when it comes to the treatment of the securitisation itself, a distinction should be made between an</p>	<p>EBA Guidelines on limits on exposures to shadow banking entities²³.</p> <p>That said, according to Article 244(1) of the CRR, SRT criteria are applicable only when the institution is the originator of the securitisation. Therefore, in those cases where the institution is not the originator of the securitisation (e.g. it is the sponsor or a relevant investor in the securitisation) and the provisions of Article 18(8) of the CRR are applicable, the competent authority shall assess, on a case by case, whether there is a substantial risk of step-in, on the basis of the list of elements included in paragraphs 2 and 3 of Article 4 of these RTS and in accordance with the provisions established in Article 7. If, based on this assessment, the competent authority concludes that there is a substantial risk of step-in, it may require the application of full or proportional consolidation for prudential purposes, depending on the specific circumstances.</p> <p>B. Other special purpose vehicles used to set-up securitisations (SPV-SEC)</p> <p>SPV-SEC are not covered by the interpretation provided in the EBA Q&A 2014_1530. Therefore, as a first step for the purpose of the application of the provisions of Article 18 of the CRR, it shall be assessed whether, on the basis of the activities performed, the vehicle in question may qualify as a financial</p>	

²³ See [EBA Guidelines on Limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under Article 395\(2\) of Regulation \(EU\) No 575/2013](#).

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	institution originating the securitisation and an institution acting as an investor and/or sponsor.	<p>institution or as an ancillary services undertaking according to the definitions stated respectively in Article 4(1)(26) and 4(1)(18) of the CRR. In particular:</p> <ul style="list-style-type: none"> i. In those cases where the SPV-SEC at stake qualifies as a financial institution or as an ancillary services undertaking, the provisions established in paragraphs from 1 to 6 of Article 18 CRR would apply, depending on the specific circumstances. ii. In those cases where the SPV-SEC does not qualify as a financial institution or as an ancillary services undertaking, it would be excluded from the scope of regulatory consolidation, unless the provisions of Article 18(8) of the CRR apply, and in the opinion of the competent authority full or proportional consolidation would be justified by the occurrence of a substantial step-in risk, based on the assessment of the list of elements included in paragraphs 2 and 3 of Article 4 of these RTS and in accordance with the provisions established in Article 7. 	
	With specific reference to ABCP programmes, one respondent pointed out that even though they are consolidated for accounting purposes, their regulatory consolidation would not be adequate from a prudential point of view. Among other issues, in such a case, the application of the Internal Assessment Approach or any other method of calculating risk-weighted exposures of	In the specific case of ABCP conduits, in the EBA view, the current regulatory treatment established in the securitisation framework is deemed appropriate. In the light of this, no additional treatment has been proposed in the context of these RTS with reference to ABCP conduits.	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>securitisation positions would no longer make sense as the structural features of the specific securitisation transactions would not be taken into account. Moreover, this respondent noted that in the case of ABCP programmes the analysis of significant risk transfer is irrelevant, since the sellers of the receivable are usually non-banks.</p>		
<p>Question 3. Do you currently use the method of proportional consolidation for the consolidation of subsidiaries in accordance with Article 18(2) of Regulation (EU) No 575/2013? If proportional consolidation is used, please explain if the conditions included in this Consultation Paper are met.</p>	<p>One respondent noted that the use of the method of proportional consolidation for the consolidation of subsidiaries in accordance with Article 18(2) of Regulation (EU) No 575/2013 was considered by its supervisor, although the respondent itself considered its position to fall under Article 18(4) of this Regulation. The situation arose from a planned sell-down of shareholdings in a participation of the respondent. The respondent concluded by providing comments regarding the non-fulfilled conditions of the RTS (i.e. Article 5(1)(c), 5(1)(d), 7(2)), which are assigned to Q4. A couple of other respondents mentioned that this method is of limited use or no use.</p>	<p>As a part of the changes introduced following the approval of the Risk Reduction Measure (RRM) Package, the provision originally included in Article 18(2) of the CRR, according to which competent authorities may, under certain circumstances, permit proportional consolidation of subsidiaries, has been removed and Article 18(2) has been amended. In addition, the mandate of these draft RTS has also been amended, by removing Article 18(2) from its scope. The draft RTS have been revised accordingly.</p>	<p>Articles from 3 to 7 originally included in the RTS have been removed.</p>
<p>Question 4. Do you have any comment on the conditions established in this Consultation Paper to apply proportional consolidation pursuant to Article 18(2) of Regulation (EU) No 575/2013?</p>	<p>One respondent argued that the conditions in the draft RTS should not impose any obligation on banks to recapitalise subsidiaries. Rather, the focus should be on ensuring that other shareholders cannot use their voting power to increase the share of losses borne by the bank or impose additional obligations on the bank. The same respondent suggested that the requirements relating to the solvency of other</p>	<p>See above.</p>	<p>Articles from 3 to 7 originally included in the RTS have been removed.</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>shareholders need to be evaluated in conjunction with the step-in risk factors in Article 11(5) of the consultation paper, rather than requiring all shareholders to be prudentially regulated entities. According to this respondent, the solvency of other shareholders does not affect the strict liability of shareholders or the allocation of losses, but the respondent recognises that there may be an increased expectation of non-contractual support from a large shareholder in certain circumstances. In the respondent's view, the test should be whether there is an incentive for support in excess of the bank's relative shareholding, such that proportional consolidation is not an appropriately prudent treatment.</p>		
	<p>One respondent commented that as regards the condition provided by Article 5(1)(c) of the RTS, it would not be necessary to ensure unanimous consent in order to prevent the bank from being exposed to losses beyond its shareholding. In addition, with specific reference to the condition provided by Article 5(1)(d), the same respondent pointed out that, in its opinion, the proposed condition contravenes the requirement in Article 18(2) of the CRR, according to which the liability of the parent is limited to the share of capital held. In particular, this respondent read the CRR provision as an absolute restriction rather than a relative restriction.</p>	<p>See above.</p>	<p>Articles from 3 to 7 originally included in the RTS have been removed.</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>On the condition provided by Article 7(2), two respondents commented that, in their view, it is not necessary to restrict the shareholder base to regulated firms, provided that the bank itself is under no compulsion to support the entity or incur losses which fall outside the extent of its shareholding.</p>	See above.	<p>Articles from 3 to 7 originally included in the RTS have been removed.</p>
<p>Question 5</p> <p>Do you agree on the criteria for the determination of the consolidating entity? Do you experience a different situation currently?</p>	<p>One respondent agreed with the proposed criteria.</p>		None.
	<p>Other respondents pointed out that the criteria for determining the consolidating entity provided in the draft RTS may raise interpretation issues for mutual banking groups and may be inconsistent with national regulations. These respondents have therefore proposed amendments to the text of Article 8(2) of the draft RTS.</p>	<p>The issue of consistency with national regulations that already define, for accounting purposes, the criteria for determining the consolidating entity has been already taken into consideration by the EBA and addressed in Article 8(3) of the consultation paper. For the sake of clarity, in the final RTS it has been specified that, among the factors to be considered for determining the consolidated entity, the competent authority shall also take into account whether the undertakings concerned are required to prepare consolidated financial statements for accounting purposes in those cases referred to in Article 22(7) of Directive 2013/34/EU (see Article 2(3) according to the revised numeration).</p>	None.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
<p>Question 6</p> <p>Do you have any comment on the elements included in this Consultation Paper for the application of the ‘aggregation method’ pursuant to Articles 18(3) and (6)(b) of Regulation (EU) No 575/2013? Please explain.</p>	<p>Several respondents supported the proposed approach or stated that they have no objections to it. In particular, one of them highlighted that, in the case of application of the aggregation method pursuant to Article 18(3) and (6)(b) of the CRR, the expectation is that undertakings are supervised on a consolidated basis and the CRD IV conditions for the assessment of O-SIIs and G-SIIs are assessed on the basis of the aggregated balance sheet.</p> <p>In addition, one respondent commented that:</p> <ul style="list-style-type: none"> - the case described in Article 22(7.a) of Directive 2013/34/EC²⁴ largely corresponds with joint operations as defined in IFRS 11.15 and that in 	<p>Finally, for the sake of completeness, it is worth pointing out that Articles 10 and 11 of the CRR already include specific provisions for the treatment of those credit institutions that are permanently affiliated to a central body. In particular, pursuant to Article 11(5) of the CRR the central body shall comply with the requirements of Parts Two to Eight of Regulation (EU) No 575/2013 on the basis of the consolidated situation of the whole as constituted by the central body together with its affiliated institutions.</p> <p>Article 22(7.a) of Directive 2013/34/EC refers to cases other than those of joint operations as defined in IFRS 11. Indeed, this Article refers to those cases where two or more undertakings are ‘<i>managed on a unified basis</i>’ in accordance with a contract or the memorandum or articles of association of those undertakings. By contrast, joint operations as defined in IFRS 11 are joint arrangements whereby the parties (joint operators) have ‘<i>joint control of the arrangement</i>’, which is different from having unified management.</p> <p>With specific reference to the application of the method of consolidation provided in Article 22(8) and (9) of Directive 2013/34/EU (i.e. the aggregation</p>	None.

²⁴ Article 22(7) of Directive 2013/34/EC refers to the case where:

- a) two or more undertakings which are not related, as described in paragraphs 1 or 2 of Article 22, are managed on a unified basis in accordance with a contract, or a memorandum or articles of association; or
- b) the administrative, management or supervisory bodies of two or more undertakings which are not related, as described in paragraphs 1 or 2 of Article 22, consist of the majority of the same persons in office during the financial year and until the consolidated financial statements are drawn up.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>such a case the application of the aggregation method would be burdensome;</p> <ul style="list-style-type: none"> - the application of the aggregation method in the case described in Article 22(7.b) of Directive 2013/34/EC is outside the scope of IFRS and would require a wide interpretation of the definition of 'undertaking'. In the opinion of the respondent, this would involve a substantial extension of the scope of regulatory consolidation, which it opposes. 	<p>method) in those cases referred to in point (b) of Article 22(7) of Directive 2013/34/EU, in the EBA opinion, this provision would be consistent with the Level 1 text, since pursuant to Article 18(3) of the CRR, competent authorities shall determine how consolidation shall be carried out in the case of undertakings that are related, within the meaning of Article 22(7) of Directive 2013/34/EU.</p>	
	<p>One respondent pointed out that institutions should not be forced by regulatory requirements to prepare consolidated financial statements for accounting purposes as a consequence of the provisions of Article 9 of the draft RTS. Moreover, another respondent commented that the implementation of Article 9 of the draft RTS could raise some issues in those cases where Article 18(6)(b) of the CRR applies.</p>	<p>This provision, originally included in Article 9 of the consultation paper, has been removed, since, as stated in Article 22(7) of Directive 2013/34/EC, the decision on the requirement to draw up consolidated financial statements falls within the competences of the Member States.</p>	<p>The provision originally included in Article 9 of the draft RTS was removed.</p>
<p>Question 7. Do you have any comment on the application of proportional consolidation according to Article 18(4) of Regulation (EU) No 575/2013?</p>	<p>One respondent agreed that undertakings proportionally consolidated under Article 18(4) of the CRR should meet the IFRS definition of 'joint arrangements'.</p>		<p>None.</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>Another respondent suggested clarifying that proportional consolidation should be applied regardless of whether the other shareholders or members (the 'participating undertakings') are financial sector entities.</p>	<p>In those cases referred to in Article 18(4) of the CRR, proportional consolidation is required regardless of whether the other participating undertakings are not institutions, financial institutions or ancillary services undertakings.</p> <p>In this regard, it is worth noting that:</p> <ul style="list-style-type: none"> - a definition of 'participating undertakings' has been included in the final draft RTS; and - following the amendments introduced in the Level 1 text, the definition of undertaking originally included in the consultation paper has been removed, since the term 'undertaking' is currently used in the Level 1 text also with reference to entities that are not institutions, financial institutions or ancillary services undertakings. 	<p>The definition of 'undertaking' originally included in the consultation paper has been removed, while a definition of 'participating undertakings' has been included in Article 1 of the draft RTS.</p>
	<p>A third respondent thought it would be useful to provide further guidance in the RTS on the application of proportional consolidation, since proportional consolidation is not defined either in the CRR or in IFRS.</p>	<p>The EBA believes that there is no need to provide further guidance on proportional consolidation since proportional consolidation is already permitted or required by some Member States for accounting purposes under Article 26 of Directive 2013/34/EC²⁵. Moreover, the adoption of proportional</p>	<p>None.</p>

²⁵ According to Article 26 of Directive 2013/34/EC²⁵ 'Where an undertaking included in a consolidation manages another undertaking jointly with one or more undertakings not included in that consolidation, Member States may permit or require the inclusion of that other undertaking in the consolidated financial statements in proportion to the rights in its capital held by the undertaking included in the consolidation.' and 'Article 23(9) and (10) and Article 24 shall apply mutatis mutandis to the proportional consolidation referred to in paragraph 1 of this Article.'

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
		<p>consolidation in the case of jointly controlled entities was already envisaged in IAS 31 'Interests in Joint Ventures'²⁶ as an alternative to the equity method, and IAS 31 already included some guidance on its application.</p> <p>That said, Article 8 of these draft RTS (originally Article 13 of the Consultation Paper) provides guidance on the approach to be applied for the purpose of determining the amount of AT1 and Tier 2 capital instruments (including the related shareholder accounts reserve) issued by those undertakings for which proportional consolidation has been required, to be included in the consolidated own funds.</p>	
	<p>A fourth respondent asked for further clarifications on how companies that have three shareholders who make all business decisions by a simple majority would be treated for prudential consolidation purposes. The same respondent also queried whether such a case would fall under the scope of Article 18(4) of the CRR whilst unanimous consent for the decisions related to the relevant activities is not required.</p>	<p>The draft RTS clarify that the conditions set out in Article 18(4) of the CRR are met in cases of joint arrangements as defined by IFRS 11 'Joint Arrangements', i.e. when, among other factors, decisions about the relevant activities require the unanimous consent of the parties sharing control. In other circumstances, Article 18(5) of the CRR shall apply since it deals with participations or capital ties other than those referred to in Article 18(1) and (4) of the CRR.</p>	None.

²⁶ IAS 31 'Interests in Joint Ventures' was superseded by IFRS 11 'Joint Arrangements'.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>A fifth respondent suggested:</p> <ul style="list-style-type: none"> - limiting the obligation to apply proportional consolidation by introducing a minimum threshold or a <i>de minimis rule</i>; - deleting the reference to the 'the unanimous consent of the parties sharing control', since it goes beyond the requirements set out in Article 18(4) of the CRR; - aligning the wording of Article 10(1) and Article 11(4)(a) of the draft RTS, since the current wording of Article 11(4)(a) ('without unanimous consent') would create a different requirement to that of Article 10(1)(c) ('requires the unanimous consent'). 	<p>The EBA believes that no amendment to the draft RTS is needed in such a case since:</p> <ul style="list-style-type: none"> - limiting mandatory proportional consolidation by introducing a minimum threshold or a <i>de minimis rule</i> would not be consistent with the provision of Article 18(4) of the CRR. Indeed, this Article does not envisage any threshold to be considered by supervisors in requiring proportional consolidation. This is without prejudice to the provisions of Article 19 of the CRR where applicable; - as clarified in the explanatory box on page 18 of the consultation paper, in defining the conditions for the mandatory application of proportional consolidation the EBA took into consideration the definitions of 'joint arrangement' and 'joint control' included in IFRS 11 <i>Joint arrangements</i>. In particular, according to IFRS 11, joint control is 'the contractually agreed sharing of control of an arrangement, which exists only when decisions about the relevant activities require the unanimous consent of the parties sharing control'. The EBA is of the view that such an approach is consistent with the requirements set out in Article 18(4) of the CRR. Indeed, this Article explicitly refers to the case of institutions and financial institutions managed together with one or more undertakings. However, the competent authority may require institutions to apply 	None.

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		<p>proportional consolidation also in those cases where joint control does not occur, on the basis of the provisions of Article 4 (Article 11 according to the numeration used in the consultation paper) and Article 7 of the draft RTS.</p> <ul style="list-style-type: none"> - in light of the considerations reported above there is no need to align the wording of Article 10 (1) and Article 11(4)(a) of the draft RTS (now respectively Articles 3(1) and 4(4) of the draft RTS). 	
	<p>A sixth respondent pointed out that Article 18(4) of the CRR should not be limited to situations where there is an explicit joint arrangement, but should also apply in cases where a bank has a participating interest rather than a subsidiary relationship and the bank is not uniquely responsible for the entity's management. An example of this would arise in the case of minority holdings in other financial services groups that are self-managing.</p>	<p>As clarified above, in defining the condition for the mandatory application of proportional consolidation the EBA took into consideration the definitions of 'joint arrangement' and 'joint control' included in IFRS 11 and such an approach is considered consistent with the requirements set out in Article 18(4) of the CRR. This is without prejudice to the power of the competent authority to require proportional consolidation on the basis of the provisions of Article 11 (now Article 4) of these draft RTS.</p>	None.
	<p>Another respondent commented that the equity method should be used independently of whether a joint arrangement is classified as a joint operation or as a joint venture.</p>	<p>In the EBA's opinion, the application of the equity method in the case of joint ventures would be inconsistent with requirements set out in Article 18(4) of the CRR. Moreover, as explained in the consultation paper, from a prudential standpoint there are different reasons for requiring the application of proportional consolidation in the case of joint ventures. In particular:</p>	None.

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		<ul style="list-style-type: none"> - it reflects the risks of the entities managed together and promotes an integrated approach to risk management by requiring a detailed assessment, via a 'look through' approach, of the underlying assets, liabilities and off-balance-sheet positions of the undertakings; - as the liability to these undertakings is limited to the share of capital held, it addresses the prudential risks related to the contractual exposures consistently; - as these undertakings may have similar risk profiles to institutions (for which the current prudential framework was designed), proportional consolidation could appropriately capture these risks; and - a common approach to the treatment of these participations increases comparability in situations where accounting standards provide room for judgement (e.g. assessment of joint arrangements for their classification as joint operations – which are proportionally consolidated – or joint ventures – which are accounted using the equity method). 	
	<p>Several respondents questioned the relevance of the condition provided in Article 10(1)(d) of the draft RTS. Some of these respondents commented that the requirement laid down in Article 10(1)(d) is not envisaged in the accounting definition of joint</p>	<p>According to IFRS 11.B4, in the case of joint arrangements, the contractual arrangement sets out in the terms upon which the parties participate in the activity and deals with matters such as the capital or other contributions required of the parties and how</p>	<p>Amendment to Article 3(1)(a) and (c) (previously Article 10(1)(a) and (d)) of the draft RTS to</p>

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	<p>arrangements. Other respondents highlighted that a legally enforceable contract is not the only means of demonstrating limited liability, but that there are other legally binding means, such as by way of statutory provisions. Moreover, one respondent underlined that it is not clear whether the 'legally enforceable contract' referenced in Article 10(1)(d) would be subject to the same conditions as in Article 5 of the draft RTS</p>	<p>the parties share liabilities and losses. Moreover, according to the examples provided in IFRS 11.B27, in the case of joint ventures, the related contractual arrangements generally establish that the parties are liable to the arrangement only to the extent of their respective investments in the arrangements or to their respective obligations to contribute any unpaid or additional capital to the arrangement, or both.</p> <p>Furthermore, IFRS 11.B2 clarifies that statutory mechanisms can also create enforceable arrangements either on their own or in conjunction with contracts between the parties.</p> <p>In light of this, the EBA does not see merits in deleting the condition provided in Article 10(1)(d) (now Article 3(1)(c)) of the draft RTS. Nevertheless, the condition has been amended in order to clarify that a legal enforcement arrangement could also result from the clauses of the undertaking's memoranda or articles of association. A similar clarification has been provided in Article 10(1)(a) (now Article 3(1)(a)) of the draft RTS.</p>	<p>include a reference to the clauses of the undertaking's memoranda or articles of association.</p>
<p>Question 8.</p> <p>Do you have any comment on the criteria established in this Consultation Paper on the prudential treatment of other participations or capital ties (including the equity method)</p>	<p>Several respondents raised concerns about relying on the criteria developed by the BCBS for the identification and measurement of the step-in risk in these RTS, arguing that:</p> <ul style="list-style-type: none"> - the step-in risk framework has been developed by the BCBS as a Pillar 2 guidance, therefore its inclusion in a Pillar 1 regulation through the RTS 	<p>The EBA notes that in accordance with Article 18(5) and (6) of the CRR, the competent authority shall determine whether and how consolidation is to be carried out in the cases mentioned under those provisions. Moreover, in accordance with Article 18(9), the EBA shall develop draft regulatory technical standards to 'specify conditions in accordance with which consolidation shall be carried out in the cases</p>	<p>None.</p>

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<p>under Article 18(5) of Regulation (EU) No 575/2013? Please explain.</p>	<p>is not considered appropriate and would preempt the outstanding EU implementation of the framework;</p> <ul style="list-style-type: none"> - the need for additional requirements for step-in risk is questionable since the reputational risk is already captured under the Pillar 2 framework; - since the last financial crisis, and pursuant to G20 recommendations, the accounting standards on consolidation had been revised, leading banks to consolidate more entities. In light of this, in the respondents' opinion, the prudential consolidation perimeter should not include more undertakings than the accounting consolidation perimeter. <p>Moreover, one of the respondents underlined that the application of the provisions of Article 11(4) and (5) of the draft RTS will be burdensome for institutions and it would not be appropriate since, among other factors, on the basis of the interpretation of the second sentence of Article 18(5) of the CRR, the application of the equity method would be preferable in such cases.</p>	<p>referred to in paragraphs 3 to 6 and paragraph 8' of Article 18.</p> <p>In this context, the EBA is of the view that it is in line with the CRR mandate to provide specifications on the condition under which the competent authorities shall determine the consolidation method. In doing that, it is reasonable to take into account the internationally agreed standards which are relevant for the subject matter.</p> <p>Even though the BCBS Guidelines for the identification and measurement of step-in risk are part of Pillar 2, they envisage regulatory consolidation as one of the potential responses to step-in risk. In addition, following the amendments introduced as part of the RRM package, the assessment of step-in risk is now indicated in Article 18(8) of the CRR, as an aspect to be considered by competent authorities in assessing whether to require the application of full or proportional consolidation. In this regard, the EBA believes that the approach undertaken in developing these RTS is also consistent with the spirit of the amendments introduced in the Level 1 text.</p> <p>In light of this, the EBA believes that it is appropriate to include in the RTS those elements of the BCBS Guidelines that can be addressed under the confines of the methods of consolidation. In this regard, a list of elements to be taken into consideration by the competent authority for the purpose of the step-in risk assessment is included in paragraphs 3 of Article</p>	

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		<p>4 of these RTS. Such elements generally need to be considered in combination to reach a conclusion. However, in certain situations, one indicator alone may be sufficient to trigger the identification of a risk of step-in. Additionally, competent authorities can consider other measures to address the potential risk of step-in stemming from unconsolidated undertakings under the supervisory review and evaluation processes (SREP).</p>	
	<p>Other respondents pointed out that there is a lack of clarity on the scope of the provisions of Article 11 of the draft RTS, since some terms like ‘other capital ties’ or ‘solvency ratio’ are not defined in the CRR or in the draft RTS.</p> <p>In particular, one of the respondents suggested defining ‘other capital ties’ as a significant investment in a financial sector entity as defined by Article 43 of the CRR, unless:</p> <ul style="list-style-type: none"> - the entity would otherwise meet the terms of Article 19(1) of the CRR; or - the bank chooses to apply full consolidation of the entity. <p>The same respondent also proposes to carve out from the assessment of the step-in risk factors those holdings of capital instruments classified in the trading book or to introduce a general threshold</p>	<p>Article 11 of the draft RTS (Article 4 according to the revised numeration) has been amended in order to remove any reference to the ‘solvency ratio’.</p> <p>With regard to the comments on the definition of ‘capital ties’, a definition of ‘capital ties’ is already provided in the RTS. Nevertheless, the EBA believes that this definition cannot refer to significant investments in financial sector entities, as this would include investments that are out of the scope of Article 18(5) of the CRR, such as insurance undertakings.</p> <p>With regard to the proposal of carving out from the assessment of the step-in risk factors those holdings of capital instruments classified in the trading book or introducing a general threshold for the investment in the banking book, the EBA is of the view that introducing a carve out from the step-in risk assessment for those holdings classified by the bank</p>	<p>Amendment to Article 4 (previously Article 11) of the draft RTS in order to remove the reference to the ‘solvency ratio’.</p>

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	<p>to address other non-significant holdings of capital that will arise routinely in the banking book.</p> <p>Another respondent also raised concerns that a small holding, held in the trading book of another bank's equity capital, would be included under the requirements of the RTS, potentially requiring a lengthy assessment by the competent authority to support its exclusion from prudential consolidation. Therefore, the respondent proposes aligning the definition of 'capital ties' with the definitions of 'participation' and only where the 'capital ties' are 20% or more.</p>	<p>in the trading book for regulatory purposes could give rise to potential room for regulatory arbitrage.</p> <p>Moreover, Article 19 of the CRR already envisages a quantitative threshold for the exclusion of non-significant investments from regulatory consolidation, therefore, there is no need to include any additional threshold in the RTS. Finally, with specific reference to the trading book aspects, it would be too complex to define an additional threshold in the RTS for trading book purposes since there is none in the CRR.</p>	
	<p>One respondent suggested providing a clearer framework for supervisors to differentiate between individual cases where full consolidation, proportional consolidation or treating the investment as a capital holding should be applied. In this context, this respondent proposed including a specific provision in the RTS such that, where step-in risk factors exist but the bank wishes to apply proportional consolidation, it should be required to make a statement to the regulatory authorities, stating that:</p> <ul style="list-style-type: none"> - the bank does not intend to increase its relative shareholding in the entity; - where the bank voluntarily agrees to participate in any subsequent recapitalisation of the entity, it will only do 	<p>The EBA believes that the provisions aimed at supervisors under Article 4 (previously Article 11) of the draft RTS are appropriate and sufficiently clear.</p> <p>Regarding the proposal to allow banks to adopt proportional consolidation (in lieu of full consolidation) in the presence of a specific statement provided by the bank, the EBA is concerned that such an approach would result in some undesired side-effects both from a consolidated supervision and a crisis management perspective, for the reasons reported below:</p> <ul style="list-style-type: none"> - such an approach could incentivise moral hazard; - the statement itself cannot be credible ex ante or the supervisor would not be in a position to obtain reasonable assurance that 	None.

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	<p>so to the extent of its current relative shareholding;</p> <ul style="list-style-type: none"> - any other exposures to or agreements with the entity will be on arm's-length terms. <p>If the bank is not able to make this statement then full consolidation would apply.</p>	<p>it would be respected by the bank, especially in the case of financial stress;</p> <ul style="list-style-type: none"> - in cases of breach of the conditions of the statement, the application of full consolidation could result in a sudden increase in the consolidated regulatory requirements with potential implications for the stability of the bank. 	
	<p>Another respondent suggested replacing the term 'institutions' in Article 11(4) of the draft RTS with the term 'shareholders' in order to allow for the proportional consolidation under Article 18(5) of the CRR of undertakings co-owned with other financial shareholders (e.g. insurance companies) or even non-financial shareholders.</p>	<p>Article 11(4) of the draft RTS (Article 4(4) according to the revised numeration) has been amended in order to take into consideration the comment received.</p>	<p>Amendment to Article 4(4) (previously Article 11(4)) of the draft RTS.</p>
	<p>Several respondents asked for further clarifications on the provisions of Article 11(3) of the draft RTS and on the interaction between this article, Article 18(3) of the CRR and the explanatory box in the draft RTS. In particular, one respondent asked to clarify that the provisions of Article 11(3) also apply when the equity method has been adopted for the purposes of accounting consolidation. Other respondents asked to clarify whether institutions should use the equity method for insurance entities and whether insurance sector entities would be excluded from the scope of prudential consolidation under the CRR. Moreover, according</p>	<p>Following the changes introduced in the CRR as part of the RRM package, Article 18(7) of the CRR has been amended in order to regulate the treatment of subsidiaries and participations in undertakings, which are excluded from the scope of prudential consolidation since they are not institutions, financial institutions or ancillary services undertakings. However, considering that Article 18(7) of the CRR is outside the scope of the mandate of these RTS, Article 11(3) of the consultation paper has been removed.</p>	<p>Article 11(3) originally included in the RTS has been removed.</p>

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	to one of the respondents, the provision in Article 11(3) is not justified and there are no related requirements in the CRR or in the CRD IV. According to the same respondent, in the case described in Article 11(3) of the draft RTS, the measurement values must regularly be determined by applying IFRS rules.		
<p>Question 9.</p> <p>Do you agree with the impact assessment and its conclusions? Please provide any additional information regarding the costs and benefits from the application of these draft RTS.</p>	One respondent is against the integration of the Basel Committee’s Guidelines on identification and management of step-in-risk into the RTS as this is not included in the CRR mandate.	See above.	None.
<p>Question 10.</p> <p>Please provide any additional comments on the Consultation Paper.</p>	One respondent expressed the view that where a joint venture is accounted for at equity under commercial law, applying the same method should also be permitted for prudential purposes. Moreover, the same respondent believes that the fixed €10 million total assets threshold set out in Article 19 of the CRR is not appropriate for larger institutions, since it leads to significant expenditure for consolidating very small enterprises and including them in reporting and disclosure requirements (which are substantial for large banks) without enhancing transparency regarding a bank’s risk situation.	These comments relate to issues that are outside of the scope of these RTS and should be dealt with in the Level 1 legislative text.	None.

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	<p>One respondent stressed that some of the features listed in Article 12(1) of the draft RTS as providing evidence of the existence of significant influence (e.g. the existence of material transactions with the undertaking or the provision of essential technical information) are inconsistent with the provision in Article 2 of the draft RTS, according to which significant influence implies an institution's ability to participate in the financial and operating policy decisions of another undertaking.</p>	<p>Article 2 (Article 1 according to the revised numeration) of the draft RTS provides the definition of <i>significant influence</i> making reference to the institution's ability to participate in the financial and operating policy decisions of another undertaking which does not qualify as a subsidiary as defined by Article 4(16) of Regulation (EU) No 575/2013. Additionally, Article 12(1) (Article 5(3) according to the revised numeration) provides a non-exhaustive list of features that should be considered when assessing whether the institution is able to participate in the financial and operating policy decisions of another undertaking. In this regard, the EBA is of the view that there is no inconsistency. Moreover, the features provided by Article 12(1) (Article 5(3) according to the revised numeration) of the RTS are not ordered by importance, nor should they be considered exhaustive. Generally, all the features need to be considered in combination to reach a conclusion. However, in certain situations, one feature alone may be sufficient to trigger the identification of significant influence.</p>	None.
	<p>One respondent made some comments about Article 14 of the draft RTS on the method of consolidation where significant influence is deemed to exist. While the respondent agrees that situations where the institution does not hold any participation or other capital ties the treatment</p>	<p>In accordance with Article 14 of the draft RTS (Article 5 according to the new numeration) the competent authority may, in particular, require full consolidation when, as a consequence of organisational and financial relationships, the institution is exposed in substance to the majority of the risks and/or the</p>	None.

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	<p>should be agreed with the competent authority on a case by case basis, it sees the scenario of deviating from accounting and requiring full consolidation as disproportionate, especially given that if a participation or other capital ties are held, it would only lead to proportional consolidation.</p>	<p>benefits arising from the activities of the undertaking. The same provision is also set out under Article 11(7) (now Article 4(5)) of the draft RTS for cases in which participation or capital ties are held. In this regard, the provision is not deemed to be disproportionate. Moreover, in the cases in the scope of Article 18(6) (a), proportional consolidation would be not feasible, given the lack of any participation or capital tie with the institution.</p>	
	<p>Two respondents are of the opinion that the EBA should provide clarity by means of these RTS on the scope of consolidation with respect to investments in Collective Investment Undertakings (CIUs), with a view to giving precedence to the fund look-through rules rather than requiring consolidation. In particular, the comments address the question of whether UCITS and other CIUs should be considered financial institutions and if this is the case, whether it is appropriate to require their full consolidation for regulatory purposes when they are consolidated in accounting (as for instance during the seeding phase).</p>	<p>The requested clarifications are related to the application of the CRR definitions of a ‘financial institution’ and an ‘ancillary services undertaking’ rather than to the methods of prudential consolidation under Article 18 of the CRR and, as such, they cannot be provided in the context of these RTS.</p> <p>That said, it is worth noting that this issue has been already dealt with in the EBA Q&A 2015_2383, albeit with reference to the treatment of Undertakings for Collective Investment in Transferable Securities (UCITS). In the light of the clarifications provided in the abovementioned Q&A, it can be inferred that, as a difference with asset management companies that are financial institutions, CIUs are normally not expected to qualify as financial sector entities and, as such, according to the Level 1 text, they are excluded from the scope of regulatory consolidation, unless the conditions for the application of the provisions of Article 18(8) of the CRR are met and in the opinion of</p>	<p>None.</p>

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		<p>the competent authority there is a substantial risk of step-in. However, the EBA is of the view that, in the specific case of CIUs, the dedicated treatment established in Article 132 and 152 of the CRR for exposures in the form of units or shares in CIUs is generally deemed to be appropriate and any residual risk of step-in may be mitigated through the application of the EBA Guidelines on limits on exposures to shadow banking entities²⁷.</p>	
	<p>Some respondents also commented that, in the event that CRR2 introduces significant changes to the requirement of prudential consolidation, a further consultation process on the draft RTS should be conducted.</p>	<p>As mentioned in the Background and rationale section in these draft RTS, the amendments brought to Article 18 of the CRR following the approval of the Risk Reduction Measures Package have led to some changes to the final text of the draft RTS. That said, these changes do not introduce any substantially new aspects compared to the consultation paper and to the requirement already established in the Level 1 text. In this regard, it is worth recalling that the list of elements to be used by the competent authority for the purpose of the step-in risk assessment was already included in the consultation paper. Finally, considering the importance of these RTS for the purpose of consolidated day to day supervision, it</p>	None.

²⁷ See [EBA Guidelines on Limits on exposures to shadow banking entities which carry out banking activities outside a regulated framework under Article 395\(2\) of Regulation \(EU\) No 575/2013](#).

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		would not seem reasonable to postpone their delivery further.	
	One respondent suggested including in Article 12 a reference to possible mitigating factors that should be considered when assessing whether consolidation is needed in the case where an institution exercises significant influence without holding a participation or other capital ties.	Article 12 (now Article 5) of the RTS has been amended in order to clarify that, in assessing the risks posed to the institution exercising the significant influence by the institutions or the financial institutions concerned, consideration shall be given also to the extent and the effectiveness of any risk mitigants.	Amendment to Article 5 (previously Article 12) of the draft RTS.