

EBA/RTS/2023/03

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Final Report

Draft Regulatory Technical Standards

on the scope and methods of consolidation of an investment firm
group under Article 7(5) of Regulation (EU) 2019/2033

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1. Executive Summary

These draft RTS complete the EBA Roadmap on Investment Firms: The Directive (EU) 2019/2034 (IFD) and Regulation (EU) 2019/2033 (IFR) give a significant number of mandates to the EBA and a comprehensive work plan for delivering all mandates is established in a Roadmap on Investment Firms Prudential Package which was published by the EBA on 2 May 2020¹. These technical standards are the last ones the EBA expect to publish in the context of that Roadmap.

This final report proposes proportionate and consistent prudential requirements for consolidation of investment firms: This final report explains the policy choices of regulatory requirements for draft RTS and outlines their legislative basis. The EBA is of the view that proposed regulatory requirements ensure a proportionate and technically consistent prudential framework for investment firms.

Four key aspects of consolidation are covered in these draft RTS: These draft RTS, as mandated by Article 7(5) of the IFR, cover four key aspects: the scope of consolidation; the methods of consolidation; the methodology for the prudential consolidation; and the rules applicable for minority interest and additional Tier 1 and Tier 2 instruments issued by subsidiaries in the context of prudential consolidation.

The underlying principle for developing these draft RTS has been alignment with the corresponding framework for credit institutions, but differences exist based on the legal texts: In developing these draft RTS the EBA has relied, where possible, on existing work regarding the prudential consolidation of credit institutions. However, since Article 7 of the IFR does not provide for all the different cases included in Article 18 of the CRR, the scope of consolidation for investment firm groups is more limited calls for a closer alignment with Article 22 of the AD. This alignment resulted in a significant restructuring of the legal text, discussed throughout the rest of this document.

The type of entities in the scope of consolidation and the types of relationships bringing entities in the scope: Three types of consolidating entities are possible: Union parent investment firms, Union parent investment holding companies and Union parent mixed financial holding companies. These consolidating entities carry out the consolidation of four types of undertakings which must be, in line with the definition of 'investment firm group' in Article 4(1)(25) of the IFR, subsidiaries of the Union parent undertaking: investment firms, financial institutions, ancillary services undertakings and tied agents of an investment firm. Entities in the scope of consolidation could be connected via control, via dominant influence or management on a unified basis regardless of capital ties or via horizontal linkages.

Only two consolidation options available for investment firms: While the initial version of the draft RTS significantly drew from the equivalent work on credit institutions, due to the difference in perimeters discussed above, the main reference is Article 22 of the AD. Out of these options, only two are applicable in the context of these draft RTS – full consolidation and the aggregation method.

The methodology for the consolidation of the K-factor requirements followed several principles: only MiFID services are considered; not all activities carried out by financial institutions are considered; avoiding double-counting; address the specificities of some of the K-factors.

¹[EBA Roadmap on investment firms](#)

Next steps: The draft regulatory technical standards will be submitted to the Commission for endorsement before being published in the Official Journal of the European Union. The technical standards will apply 20 days after the entry into force.

2. Background and rationale

2.1 Background

1. The Regulation (EU) 2019/2033² (IFR) and the Directive (EU) 2019/2034³ (IFD), which were published in the Official Journal of the European Union on 5 December 2019 and entered into force on 26 December 2019, replaced the previous prudential framework for investment firms (IFs) included in Regulation (EU) 2013/575⁴ (CRR).
2. A significant number of mandates have been given to the EBA under the IFR/IFD framework, thus the EBA published a Roadmap on Investment Firms Prudential Package detailing its strategy for delivering on the mandates, as well as the main principles it considered while delivering on those mandates. More precisely:
 - a) The EBA is committed to ensuring proportionality with regard to the regulatory requirements aimed at IFs of different size and complexity, regarding it as a key aspect of the new regime.
 - b) Given the interlinkages between the CRR/CRD, on the one hand, and the IFR/IFD package on the other hand, the EBA technical standards should allow for transitions between the two frameworks without significant disruptions.
 - c) Nonetheless, the EBA recognises the specific risk structure and drivers of IFs and will therefore be particularly mindful of ensuring that the main risks to clients, market and the investment firms itself are well covered.
3. The EBA has published on 4 June 2020 a Consultation paper⁵ including the draft RTS on the prudential consolidation of investment firm groups.
4. This document covers this final mandate developed as part of the EBA Roadmap and provides detailed explanations of the background and rationale for these draft RTS, the final legal text for these draft RTS and additional documents.

2.2 The draft RTS on the scope and methods of prudential consolidation of investment firm groups (Article 7(5) of the IFR)

5. The EBA has developed these draft RTS in accordance with the mandate in Article 7(5) of the IFR, which states that: 'EBA shall develop draft regulatory technical standards to specify the details of the scope and methods for prudential consolidation of an investment firm group, in particular for the purpose of calculating the fixed overheads requirement, the permanent

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R2033&from=EN>

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L2034&from=EN>

⁴ EUR-Lex - 02013R0575-20230101 - EN - EUR-Lex (europa.eu)

⁵ [Regulatory Technical Standards on prudential requirements for investment firms](#)

minimum capital requirement, the K-factor requirement on the basis of the consolidated situation of the investment firm group, and the method and necessary details to properly implement paragraph 2.’

6. This mandate requires four key aspects to be addressed:
 - a) the scope of consolidation, i.e. which entities should be included in the consolidation of the group;
 - b) the methods of consolidation, i.e. how entities shall be included in the consolidation of the group;
 - c) the methodology for the calculation of the own funds requirements in a consolidated situation; and
 - d) the rules applicable for minority interest and additional Tier 1 and Tier 2 instruments issued by subsidiaries in the context of prudential consolidation.

7. The initial drive for the work on these draft RTS was to fully align with the consolidation requirements for credit institutions, hence the form of the draft legal text presented in the consultation paper published on 4 June 2020. However, the outcome of this public consultation, as presented in the Feedback table in Section 4.3, has drawn attention to the differences between the IFR and the CRR and called for a closer alignment with Article 7 of the IFR and, therefore, with Article 22 of the AD (please refer to Section 2.2.1 for more details). This alignment resulted in a significant restructuring of the legal text, discussed throughout the rest of this document.

8. More specifically, in developing these draft RTS, the EBA has relied, where possible, on existing work regarding the prudential consolidation of credit institutions⁶. However, since Article 7 of the IFR does not provide for all the different cases included in Article 18 of the CRR, the scope of consolidation for investment firm groups is more limited, as also shown in Figure 1 below:

Figure 1: Scope comparison between IFR, AD and CRR



2.2.1 General approach to the IFR mandate and existing CRR-related material

⁶ [Final Report Draft RTS methods of consolidation](#)

9. Aware of the fact that i) until the entry into application of the IFR/IFD regulatory package, IFs were generally subject to CRR provisions regarding scope and methods of prudential consolidation; ii) building upon existing provisions fosters continuity and lessens the adaptation costs; iii) building on a resilient set of rules provides legal certainty to the industry and mitigates risks of major drawbacks, the proposed way forward is to build upon existing material deriving from the CRR in terms of scope and methods of prudential consolidation.
10. Accordingly, the first point to be discussed when elaborating on the IFR mandate, particularly on the scope and methods aspects, was how much this technical standard on prudential consolidation of IFs can be similar to the equivalent technical standard already in force for the prudential consolidation of credit institutions (Commission Delegated Regulation 2022/676) issued on the basis of Article 18 of the CRR. It is the EBA view that prudential consolidation under the IFR and prudential consolidation under the CRR cannot be specified in an identical way in the respective technical standards, in particular because:
- a) The mandate in Article 7(5) of the IFR⁷ is to be read in conjunction with the obligation of prudential consolidation set out in Article 7(1) of the IFR⁸ and the term “consolidated situation” of the investment firm group, which is defined in Article 4(1)(11) of the IFR⁹. Therefore, entities that are not investment firms, (mixed) financial holding companies, financial institutions, ancillary services undertakings or tied agents can neither be part of an investment firm group, nor be in-scope of the IFR technical standard on prudential consolidation. On the contrary, for the banking sector, Article 18 of the CRR permits the inclusion of other undertakings in the scope of the prudential consolidation of the banking groups and reflected in the respective technical standards.
 - b) The mandate in Article 7(5) is necessarily limited by the definition of the investment firm group set out in Article 4(1)(25) of the IFR¹⁰. Therefore, entities that are not, in accordance with the Directive (EU) 2013/34¹¹ (the Accounting Directive, AD), subsidiaries of the Union parent cannot be within the scope of the IFR prudential consolidation, so the IFR technical standards on prudential consolidation do not elaborate on those cases. On the other hand, for the banking sector, links other than those set out in Article 22 of the AD are explicitly brought within the scope of Article 18 of the CRR and thus of the respective technical standard.

⁷ “to specify the details of the scope and methods for prudential consolidation of an investment firm group”

⁸ “Union parent investment firms, Union parent investment holding companies and Union parent mixed financial holding companies shall comply with the obligations laid down in Parts Two, Three, Four, Six and Seven on the basis of their consolidated situation”

⁹ “‘consolidated situation’ means the situation that results from applying the requirements of this Regulation in accordance with Article 7 to a Union parent investment firm, Union parent investment holding company or Union parent mixed financial holding company as if that undertaking formed, together with all the investment firms, financial institutions, ancillary services undertakings and tied agents in the investment firm group, a single investment firm; for the purpose of this definition, the terms ‘investment firm’, ‘financial institution’, ‘ancillary services undertaking’ and ‘tied agent’ shall also apply to undertakings established in third countries, which, were they established in the Union, would fulfil the definitions of those terms”

¹⁰ “‘investment firm group’ means a group of undertakings which consists of a parent undertaking and its subsidiaries or of undertakings which meet the conditions set out in Article 22 of Directive 2013/34/EU (Accounting Directive) of the European Parliament and of the Council, of which at least one is an investment firm and which does not include a credit institution”

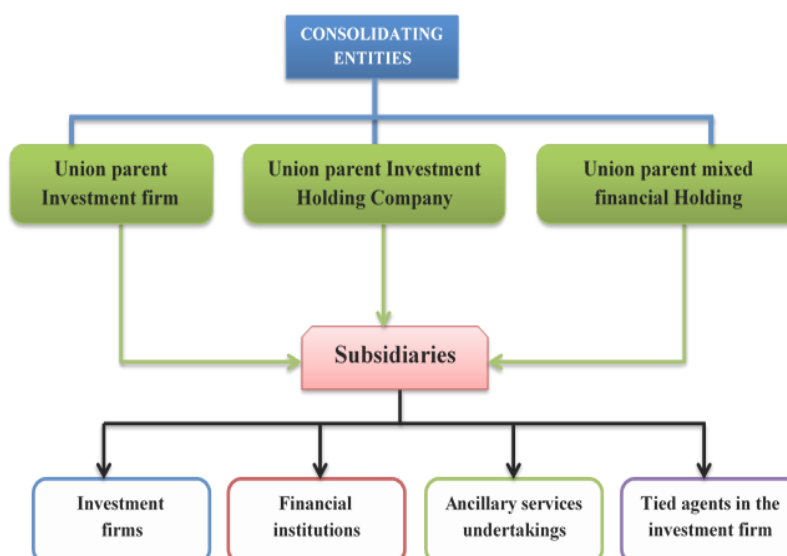
¹¹ [EUR-Lex - 32013L0034 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/eli/dir/2013/34/oj)

- c) Finally, Article 7 of the IFR does not provide for the different cases set out in the various paragraphs of Article 18 of the CRR. This necessarily limits the scope of the IFR RTS within the boundaries set out in points (a) and (b) above. Arguing the opposite would not be convincing given the different wording of the two regulatory texts (i.e. IFR and CRR, respectively).
11. With regards to the own fund requirements introduced by the IFR/IFD framework, these derive from a different perspective than the one in the CRR. The K-factor metrics mainly use volumes of activities or services instead of accounting data, whereas own funds requirements under the CRR are calculated using balance sheet items, which results in the consolidation of entities for accounting and prudential purposes being similar in nature under the CRR. Therefore, in order to define the own funds requirements based on the consolidated situation of an investment firm group, it is not possible to rely on the consolidated balance sheet of the group.
12. These elements are summarised in the next sub-sections.

2.2.2 Entities in the scope of prudential consolidation under IFR

13. When it comes to the prudential consolidation process, the first step is represented by the determination of the scope of consolidation and rules on this topic need to ensure that a group does not wrongly exclude or include entities, action which could have the effect of distorting the risk bases or artificially increasing the amount of own funds.
14. Pursuant to Article 7 of the IFR and in line with the definition of ‘consolidated situation’ in Article 4(11) of the IFR, the scope of prudential consolidation starts with a consolidating entity at the top of the group as a union parent undertaking. Three types of consolidating entities are possible: Union parent investment firms, Union parent investment holding companies and Union parent mixed financial holding companies. These consolidating entities carry out the consolidation of four types of undertakings which must be, in line with the definition of ‘investment firm group’ in Article 4(1)(25) of the IFR, subsidiaries of the Union parent undertaking: investment firms, financial institutions, ancillary services undertakings and tied agents of an investment firm. This includes undertakings in third countries, which, if they were established in the EU, would meet the definitions for the types of entities included in the scope (i.e. investment firms, financial institutions, ancillary services undertakings and tied agents of an investment firm). Figure 2 shows a summary of the type of entities within the scope of consolidation of an investment firm group:

Figure 2: Scope of prudential consolidation based on Article 4(1)(11) of the IFR



15. From the perspective of what types of connection bring entities in the scope of consolidation, there are several types of relationships specified in Article 22 of the AD. However, these relationships are specified for generic undertakings, and it was necessary to clarify in the draft RTS not only the types of entities, but also the scope of prudential consolidation, which is wider than simply drawing up consolidated financial statements and a consolidated financial report as set out in Article 22 of the AD. Therefore, Article 2 of the draft RTS aims at providing clarity by providing a list of possible relationships: entities in the scope of consolidation could be connected via control (Article 2(1) of the draft RTS), via dominant influence or management on a unified basis regardless of capital ties (Article 2(2) of the draft RTS) or via horizontal linkages (Article 2(3) of the draft RTS). Table 1 summarises the parallel structure of the draft RTS and the relevant articles of the AD:

Table 1: Mapping of draft RTS vs Article 22 of the AD

Topic	Article in draft RTS	Description	Method	Article in the AD
Scope through control	2(1)(a)	Majority voting rights	Full	22(1)(a)
Scope through control	2(1)(b)	Right to appoint majority	Full	22(1)(b)
Scope through control	2(1)(c)	Dominant influence pursuant to a contract	Full	22(1)(c)
Scope through control	2(1)(d)(i)	Majority appointed as a result of exercising voting rights	Full	22(1)(d)(i)
Scope through control	2(1)(d)(ii)	Control of majority pursuant to agreement with other shareholders	Full	22(1)(d)(ii)
Scope through dominant influence without capital ties	2(2)(a)	Dominant influence or control, regardless of whether any capital ties exist	Full	22(2)(a)
Scope through management on a unified basis without capital ties	2(2)(b)	Managed on a unified basis, regardless of whether capital ties exist	Full	22(2)(b)
Scope through horizontal linkages	2(3)(a)(i)	Managed on a unified basis in accordance with a contract concluded	Full or aggregation	22(7)(a)(i)

Scope through horizontal linkages	2(3)(a)(ii)	Managed on a unified basis in accordance with a memorandum or articles of association	Full or aggregation	22(7)(a)(ii)
Scope through horizontal linkages	2(3)(b)	The administrative, management or supervisory bodies consist in the majority of the same persons in office	Full or aggregation	22(7)(b)
Exemptions	3	Thresholds for exemption from scope		
Assessment of management on a unified basis regardless of capital ties	4	Criteria for management on a unified basis regardless of capital ties		
Conditions for horizontal linkages	5	Conditions for the application of the horizontal linkages criteria in Article 2(3) of the draft RTS		

16. It is the competent authorities' duty to identify whether two or more entities are managed on a unified basis, regardless of whether there are any capital ties. In carrying out this assessment, conditions in Article 4 of the draft RTS shall be fulfilled.
17. Furthermore, given that where horizontal linkages are concerned, a group parent cannot be identified, the entity carrying out the consolidation can be designated using the provisions in Article 5(1) of the draft RTS. NCAs have the possibility to appoint an entity as consolidator, even if it does not fulfil the criteria in paragraph 1 of Article 5, provided this entity is already the de facto consolidator.

2.2.3 Entities outside the scope of prudential consolidation under IFR

18. The definition of 'investment firm group' in Article 4(1)(25) of the IFR refers to Article 22 of the AD and clarifies that the notion excludes undertakings which are credit institutions. Additionally, the definition of 'financial institution', in line with Article 4(1)(14) of the IFR, also excludes from the scope of consolidation insurance holding companies and mixed-activity insurance holding companies.
19. Furthermore, Article 22 of the AD discusses the requirements to prepare consolidated financial statements and details the relationships between entities, which should be caught in the scope of consolidation. However, the scope of this Article as compared to the equivalent article for credit institutions (i.e. Article 18 of the CRR) is narrower, as it effectively excludes: i) significant influence, ii) insurance undertakings, and iii) entities exposed to 'step-in risk' (i.e. where there is a substantial risk that the institution decides to provide financial support to that undertaking in stressed conditions, in the absence of, or in excess of any contractual obligations to provide such support).
20. Finally, due to the fact that the scope of prudential consolidation, as defined by Article 7(1) of the IFR, includes only subsidiary undertakings controlled by parent undertakings, as defined by Articles 2 (10) and 22 of the AD. In the absence of control (Article 22 (1) of the AD), dominant influence (Article 22 (2) of the AD) or horizontal linkages (Article 22 (7) of the AD), the

undertaking is not included in the scope of prudential consolidation under the IFR. Therefore, it is not possible to extend the scope of consolidation in the IFR using the RTS, without a specific provision as the one in the CRR.

2.2.4 Criteria for exclusion from the scope of consolidation

21. In line with the mandate granted to the EBA to specify the details of the scope of consolidation, the proposed draft RTS also include the possibility for NCAs to decide the exclusion of entities from the scope of prudential consolidation, provided certain conditions are met. In the spirit of alignment with the treatment of credit institutions, the proposed conditions are inspired by Article 19 of the CRR.

2.2.5 The methods for prudential consolidation

22. The mandate in Article 7(5) of the IFR requires to specify the details of the methods to be used for prudential consolidation. While the initial version of the draft RTS significantly drew from the equivalent work on credit institutions, due to the difference in perimeters discussed above, the main reference is Article 22 of the AD.
23. In particular, there are several methods available for prudential consolidation which are presented throughout CRR, IFR and AD:
- a) Full consolidation;
 - b) Proportional consolidation – defined in Article 26(1) of the AD: 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;
 - c) The equity method (which is not a consolidation method) – not defined in any relevant regulatory text;
 - d) The aggregation method – defined in Article 22(8) of the AD as a specific method for entities managed on a unified basis and/or under single management.
24. However, out of these options, only two are applicable in the context of these draft RTS – full consolidation and the aggregation method, as the equity method is effectively out of the scope of the mandate granted to the EBA in Article 7(5) of the IFR, while without joint control, the proportional consolidation is not an available method for investment firm groups.
25. Therefore, unless a prudential waiver has been granted, the IFR applies to investment firms on an individual and on a consolidated basis, and the general rule for the preparation of their consolidated situation for prudential purposes is the ‘full’ consolidation. However, as described in Article 6(2) of the draft RTS, in certain cases, and subject to the permission of the group supervisor, the aggregation method can be used for the consolidation of these entities.

Table 2: Methods of consolidation

Topic	Article in draft RTS	Description	Method	Article in the AD

Methods: Full consolidation	6(1)	Method by default	Full	22(1)
Methods: Aggregation method	6(2)	Method for scope in Article 2(3) of the draft RTS	Aggregation	22(7), 22(8) and 22(9)

2.2.6 Recognition of minority interest and additional Tier 1 and Tier 2 instruments

26. In line with the mandate granted to the EBA in Article 7(5) of the IFR (i.e. “specify [...] the method and necessary details to properly implement paragraph 2 (of the same Article)), Article 7 of the draft RTS clarifies that the CRR rules apply in full when it comes to the recognition of minority interest and additional Tier 1 and Tier 2 instruments. Furthermore, in an effort to maintain as much as possible an alignment with the rules for credit institutions, precisions regarding the treatment of minority interest and additional Tier 1 and Tier 2 instruments in the context of the aggregation method are provided in paragraphs 2 and 3 of Article 7 of the draft RTS, in particular as regards the availability of these instruments to cover the losses of all the undertakings in the prudential scope of consolidation.

Table 3: Treatment of minority interest

Topic	Article in draft RTS	Description
Minority interest and additional T1 and T2 instruments	7	Details with regards to provisions on minority interest and additional instruments applicable to investment firms

2.2.7 The methodology for the consolidation of capital requirements

27. The own funds requirement calculation on a consolidated basis follows the same principle as on an individual basis under the IFR, which consists in requiring that the own funds are at least equal to the highest of three components: a fixed overhead requirement, a permanent minimum capital requirement, and a K-factor requirement linked to the activities; more specifically:
- The consolidated permanent minimum capital requirement has to follow a prudent approach, which is best implemented by summing the individual requirements of the group undertakings, including third-country undertakings.
 - The group fixed overhead requirement follows a hierarchical approach of using the consolidated expenditures account, if it is available, or sum of the individual fixed overhead requirement, and corresponds to the same scope of consolidation.
 - The consolidation of K-factor requirements has to follow the same prudent approach, while giving recognition to the fact that undertakings belong to the same group. The various metrics that underlie the K-factors are considered on a case-by-case basis for capturing the risks they represent.

These three components have to be consolidated for the group before calculating the highest of them.

28. With regards to the consolidation of the K-factor requirements, several principles were taken into account when considering each K-factor:
- a) Only MiFID services are considered: Entities in an investment firm group may carry out a wide range of activities, of which some are not part of Annex I of Directive (EU) 2014/65 (MiFID). For the calculation of the consolidated K-factors, only those activities that are included in Annex I of that directive or could be associated with these activities should be considered according to the definition of ‘consolidated situation’ in Article 4(1)(11) of the IFR.
 - b) Not all activities carried out by financial institutions are considered: Financial institutions, defined according to Article 4(1)(14) of the IFR, are part of the scope of consolidation of an investment firm group in line with Article 4(1)(11) of that Regulation, but not all activities carried out by different financial institutions contribute to the calculation of consolidated K-factor requirements.
 - c) Avoiding double-counting: Services and transactions may be carried out between entities part of the same investment firm group. With a view to avoiding the double-counting of elements eligible for own funds’ calculation, intragroup services and transactions should be excluded for the calculation of certain consolidated K-factor requirements.
 - d) Address the specificities of the K-factors: the consolidation of most k-factors is performed through the sum of k-factors calculated at individual level, however K-CON, and K-NPR and K-TCD where relevant, are consolidated considering the trading book of the group as a whole.
29. An overview of the structure of the draft RTS is provided in Table 4.

Table 4: Calculation of own funds requirements for an investment firm group

Topic	Article in draft RTS	Description
Own funds: PMC	9	Consolidated permanent minimum capital requirement
Own funds: FOR	10	Consolidated fixed overheads requirement
Own funds: K-factors	11	Consolidated K-factor requirement
Entry into force	12	Entry into force

3. Draft RTS on the scope and methods of the prudential consolidation of an investment firm group under Article 7(5) of Regulation (EU) 2019/2033

COMMISSION DELEGATED REGULATION (EU) .../..

of XXX

[...]

supplementing Regulation (EU) 2019/2033 of the European Parliament and of the Council with regard to regulatory technical standards for the prudential consolidation of an investment firm group in accordance with Article 7 of that Regulation

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014, and in particular Article 7(5), third subparagraph, thereof,

Whereas:

- (1) To specify the details of the scope of prudential consolidation of an investment firm group, it is necessary to determine, on the basis of Directive 2013/34/EU of the European parliament and of the Council¹², the links on the basis of which investment firms, financial institutions, ancillary services undertakings and tied agents related to a particular investment firm, investment holding company or mixed financial holding company should be included in that scope.
- (2) To create a harmonised regime of prudential consolidation across the Union, parent-subsidary links set out in Directive 2013/34/EU should be specified unequivocally and consistently across the Union. To ensure the effectivity and neutrality of the supervision on a consolidated basis, clear parent-subsidary links for all investment firm groups across the Union should be established by providing criteria for competent authorities to determine where such links exist.
- (3) In order to take into account the links for consolidated supervision, investment firms, financial institutions, ancillary services undertakings and tied agents should be included in the scope of prudential consolidation of the Union parent investment firm, Union parent investment holding company or Union parent mixed financial holding

¹² 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).

company where control is established, dominant influence is exercised, unified management or horizontal links are assessed.

- (4) Having regard to the principle of proportionality, in particular to the diversity in size and scale of operations of undertakings subject to this Regulation, an exemption from the scope of prudential consolidation could be granted to the parent undertaking regarding the exclusion of small undertakings, taking into account the sum of their total assets and off-balance sheet items, excluding assets under management. This exemption should be granted considering objective criteria calculated as absolute measures, as well as relative measures that include the exempted entities in a group.
- (5) The scope of prudential consolidation of an investment firm group, by reference to Article 22(2), point b) of Directive 2013/34/EU, includes cases where investment firm group entities are managed on a unified basis. To determine whether management on a unified basis exists, the competent authority should have concrete evidence that there is an effective coordination of the financial and operating policies of such institutions or financial institutions.
- (6) The scope of prudential consolidation for an investment firm group includes cases of horizontal linkages where two entities are related within the meaning of Article 22(7) points (a) and (b), one is not a subsidiary of the other and thus it is not possible to determine a Union parent undertaking. In such cases it is necessary for the competent authority or, where applicable, the group supervisor as defined in Article 3(1)(15) of Directive (EU) 2019/2034 to determine the entity that should perform the consolidation and take on the role of Union parent undertaking.
- (7) To ensure that prudential consolidation for investment firms is consistently carried out across Member States, there is a need to provide competent authorities with criteria, which they should apply in order to determine the method of prudential consolidation appropriate for each link and each investment firm group.
- (8) To ensure effective application of the prudential requirements at the consolidated level, full consolidation of all entities included within the scope of prudential consolidation should be applied as a general rule.
- (9) Where two undertakings are related within the meaning of Article 22(7) points (a) and (b) of Directive 2013/34/EU, and thus one is not a subsidiary of the other, the most appropriate method of prudential consolidation should be the method set out in Article 22(8) and (9) of Directive 2013/34/EU ('aggregation method') in line with the rules set out in that Directive.
- (10) In order to ensure consistency, to the extent appropriate considering the specificities of investment firms own funds requirements, it is necessary to set out the method and the details for the application of the relevant provisions of Regulation (EU) 575/2013 of the European Parliament and of the Council¹³ on minority interest and additional Tier 1 and Tier 2 instruments issued by subsidiaries of those firms. Against this background, it should also be clarified that Article 34a of Commission Delegated Regulation (EU) 241/2014 applies to investment firms.

¹³ 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 (OJ L 176, 27.6.2013, p. 1–337)

- (11) In order to prevent the multiple use of elements eligible for own funds' calculation, when calculating the consolidated permanent minimum capital requirement for an investment firm group, all of the individual permanent minimum capital requirement for individual investment firms should be summed up with the initial capital of those financial institutions that have this type of capital requirement, in particular asset management companies, payment institutions and electronic money institutions.
- (12) Given that expenditure figures are not always available based on the applicable accounting framework on a consolidated basis, in order to calculate the consolidated fixed overheads requirement, an investment firm group should obtain the amount of expenditure needed by summing up the expenditure corresponding to the Union parent undertaking, and to the entities that are prudentially consolidated in the group and, where not already included in the costs of the investment firms, the costs of tied agents.
- (13) Where changes, such as shifts in the business models or mergers and acquisitions, may occur and result in significant variations in the projected fixed overhead, rules specifying own funds requirements for investment firm groups based on fixed overheads should establish objective thresholds based on the projected fixed overheads for the purpose of specifying the notion of material change based on which the competent authority may adjust the amount of own funds requirements.
- (14) Entities in an investment firm group may carry out a wide range of activities, of which some are not part of Annex I of Directive (EU) 2014/65 of the European Parliament and of the Council¹⁴. For the calculation of the consolidated K-factors, only those activities that are included in Annex I of that Directive (EU) or could be associated with these activities should be considered according to the definition of 'consolidated situation' in Article 4(1)(11) of Regulation (EU) 2019/2033. Therefore, this Regulation should include the provision of services referred to in Article 6(3), points (a), (b)(i) and (b)(ii) of Directive 2009/65/EC of the European Parliament and of the Council¹⁵ or the provision of services referred to in Article 6(4), points (a), (b)(i), (b)(ii) and (b)(iii) of Directive 2011/61/EU of the European Parliament and of the Council¹⁶.
- (15) Financial institutions, defined according to Article 4(1)(14) of Regulation (EU) 2019/2033, are part of the scope of consolidation of an investment firm group in line with Article 4(1)(11) of that Regulation. However, not all activities carried out by different financial institutions contribute to the calculation of consolidated K-factor requirements and clear rules should be specified with regards to which financial institutions have activities that are relevant for specific K-factors.
- (16) Services and transactions may be carried out between entities part of the same investment firm group. With a view to avoiding the double-counting of elements eligible for own funds' calculation, intragroup services and transactions should be excluded for the calculation of certain consolidated K-factor requirements, in

¹⁴ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349–496)

¹⁵ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32–96)

¹⁶ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1–73)

particular as regards the K-factors ‘assets safeguarded and administered’ (K-ASA), ‘client orders handled’ (K-COH) and ‘daily trading flow’ (K-DTF).

- (17) Delegation of assets’ management can occur between an investment firm and another entity part of the same group. When calculating the consolidated K-factor ‘assets under management’ (K-AUM), it should be clarified how these assets are to be accounted for in the total amount of assets under management, with a view to avoid double-counting.
- (18) Entities in the scope of consolidation according to Article 4(1)(11) of Regulation (EU) 2019/2033 may hold client money for performing their activities. However, some of these entities may hold client money also for activities not included in Annex I of Directive (EU) 2014/65, such as payment institutions and asset management companies. Therefore, there is a need to specify that the calculation of the K-factor ‘client money held’ (CMH) should not include client money held by these types of entities.
- (19) An investment firm group has to calculate K-COH for all orders received and transmitted or executed for clients and considering all entities in the group that provide these services. However, some of the entities may provide these services to other entities part of the same group that provide portfolio management or advice on an ongoing basis to clients. The investment firm group also has to calculate K-AUM on account of the risk-to-client posed by these activities, including the portfolio manager. Since the client is already protected by the AUM, then the investment firm group should not include those transactions in its calculation of the COH.
- (20) An investment firm group may include more than one investment firm subject to the K-factor ‘net position risk’ (K-NPR), as well as financial institutions subject to the applicable market risk framework at individual level. The calculation of the consolidated K-NPR should take into account all investment firms of the group subject to K-NPR or, for financial institutions, those subject to the applicable market risk framework, as if all of those entities were subject to K-NPR. The use of positions in one entity to offset positions in another entity within the group should be allowed only if the entities have obtained the authorisation from the competent authority pursuant to Article 325b of Regulation (EU) 575/2013.
- (21) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority.
- (22) 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) 1093/2010 of the European Parliament and of the Council¹⁷,

¹⁷ 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).

HAS ADOPTED THIS REGULATION:

Chapter 1

Definitions, scope of prudential consolidation and methods for prudential consolidation

Article 1

Definitions

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

- (1) ‘Union parent undertaking’ means a Union parent investment firm as defined in Article 4(1), point (56), of Regulation (EU) 2019/2033, a Union parent investment holding company as defined in Article 4(1), point (57), of that Regulation, or a Union parent mixed financial holding company as defined in Article 4(1), point (58), of that Regulation;
- (2) ‘entity’ means an ancillary service undertaking as defined in Article 4(1), point (1) of Regulation (EU) 2019/2033, a financial institution as defined in Article 4(1), point (14) of that Regulation, an investment firm as defined in Article 4(1), point (22), of that Regulation or a tied agent as defined in Article 4(1), point (52), of that Regulation;
- (3) ‘capital ties’ means the ownership, direct or indirect, of voting rights or capital of an undertaking, including a participation as defined in Article 4(1), point (35), of Regulation (EU) No 575/2013.

Article 2

Scope of prudential consolidation

1. The following entities shall be included by the competent authority in the scope of prudential consolidation of a Union parent undertaking:
 - (a) an entity in which the Union parent undertaking or another undertaking of the investment firm group has the majority of the shareholders' or members' voting rights;
 - (b) an entity in which the Union parent undertaking or another undertaking of the investment firm group has the right to appoint or remove a majority of the members of its administrative, management or supervisory body and is at the same time a shareholder in or member of that entity;
 - (c) an entity over which the Union parent undertaking or another undertaking of the investment firm group has the right to exercise a dominant influence, pursuant to a contract entered into with that entity or to a provision in its memorandum or articles of association, regardless of whether the Union parent undertaking or another undertaking of the investment firm group is a shareholder or a member in that entity;
 - (d) an entity, in which the Union parent undertaking or another undertaking of the investment firm group is a shareholder or member and either of the following conditions is fulfilled:

(i) a majority of the members of the administrative, management or supervisory bodies of that entity who have held office during the current financial year, during the preceding financial year and up to the time when the consolidated financial statements are drawn up, have been appointed solely as a result of the exercise of the shareholder's or member's voting rights;

(ii) the Union parent undertaking or another undertaking of the investment firm group controls alone, pursuant to an agreement with other shareholders in that entity or members of that entity, a majority of shareholders' or members' voting rights in that entity.

However, point (d)(i) shall not apply where an undertaking outside the investment firm group has the rights referred to in points (a), (b) or (c) with regard to that entity.

2. In addition to the entities referred to in paragraph 1, the competent authority shall determine whether the following entities may be included in the scope of prudential consolidation of a Union parent undertaking:
 - (a) an entity over which the Union parent undertaking or another undertaking of the investment firm group has the power to exercise, or actually exercises, dominant influence or control, regardless of whether any capital ties between those entities exist;
 - (b) an entity with which the Union parent undertaking or another undertaking of the investment firm group are managed on a unified basis in line with conditions in Article 4, regardless of whether capital ties between the entities exist.
3. In addition to the entities referred to in paragraphs 1 and 2, the competent authority shall determine whether the following entities may be included in the scope of prudential consolidation:
 - (a) an entity, not falling either under paragraph 1 or paragraph 2, with which another entity of the investment firm group is managed on a unified basis in accordance with either of the following:
 - (i) a contract concluded between them;
 - (ii) the memorandum or articles of association of the entities involved;
 - (b) the administrative, management or supervisory bodies of an entity not falling either under paragraph 1 or paragraph 2 and of one or more other undertakings to which it is not related as described in paragraphs 1, 2 or 3(a) consist in the majority of the same persons in office during the current financial year and until the consolidated financial statements are drawn up with the Union parent undertaking or another entity of the investment firm group.

Article 3

Exemptions from prudential consolidation pursuant to Article 7 of Regulation (EU) No 2019/2033

1. Competent authorities may exempt the Union parent undertaking from prudentially consolidating an entity referred to in Article 2 where the sum of its total assets and of its off-balance sheet items, excluding assets under management or safekeeping, is less than the smaller of the following two thresholds:
 - (a) EUR 10 million;
 - (b) 1 % of the total amount of consolidated assets and consolidated off-balance sheet items of the Union parent undertaking, excluding its assets under management, and excluding the assets and off-balance sheet items of that entity.
2. Competent authorities may exempt the Union parent undertaking from prudentially consolidating an entity referred to in Article 2 when one of following condition is met:
 - (a) where that entity is situated in a third country where there are legal impediments to the transfer of the necessary information;
 - (b) where that entity is of negligible interest only with respect to the objectives of supervision of investment firm group;
 - (c) where the consolidation of the financial situation of that entity would be inappropriate or misleading as far as the objectives of the supervision of investment firm group are concerned.
3. Competent authorities cannot exempt the Union parent undertaking from prudentially consolidating entities referred to in paragraph 1 where the sum of total assets and of off-balance sheet items, excluding assets under management of these entities exceeds any of the thresholds referred to in paragraph 1, points (a) or (b).

Article 4

Assessment of unified management for the purposes of Article 2(2)(b)

1. A competent authority shall determine the consolidation of two or more entities that are managed on a unified basis, for the purpose of Article 2(2)(b), where the following conditions are met:
 - (a) the competent authority has carried out an assessment aimed at verifying that the entities' financial and operating policies are effectively coordinated; and
 - (b) the entities concerned are not related within the meaning of Article 22(1), (2)(a) and Article 22(7), point (b), of Directive 2013/34/EU.
2. For the purposes of paragraph 1, point (a), 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 entities concerned are controlled directly or indirectly, by the same natural person or persons, or by the same undertaking or undertakings;

- (b) the majority of the members of the administrative, management or supervisory body of that entity and of the Union parent undertaking or of another parent undertaking is appointed by the same natural person or persons or by the same undertaking or undertakings, even if those members do not consist of the same persons.

Article 5

Modality of application of Article 2(3)

1. When there is no entity in the group which meets the conditions in the definition for Union parent undertaking in line with the definitions in Articles 4(1)(56), (57) or (58) of Regulation 2019/2033, competent authorities or, where applicable, the group supervisor, shall designate as responsible for ensuring compliance with the requirements laid down in Regulation (EU) No 2019/2033 on the basis of the consolidated situation of all entities in the group and for applying the requirements set out in Chapter 2:
 - (a) where there is only one investment firm among the entities referred to in Article 2(3), that investment firm;
 - (b) where there is more than one investment firm in the scope of consolidation as set out in Article 2(3), the investment firm with the largest amount of total assets. The amount of total assets shall be calculated on the basis of the latest audited 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 investment firm.
2. As an exception from paragraph 1, the competent authorities or, where applicable, the group supervisor, may designate as responsible for ensuring compliance with the requirements laid down in Regulation (EU) 2019/2033 on the basis of the consolidated situation of all undertakings in the group and for applying the requirements set out in Chapter 2, the investment firm or the financial institution having the duty to prepare the consolidated financial statements for the group.

Article 6

Methods for prudential consolidation

1. The Union parent undertaking shall carry out a full consolidation of the entities referred to in Article 2.
2. By way of derogation from paragraph 1, the group supervisor may, in particular regarding entities referred to in Article 2(3), permit the application of the consolidation method set out in Article 22(8) and (9) of Directive 2013/34/EU to one or more of those entities.

Article 7

Methods and necessary details for the recognition in consolidated own funds of minority interest and additional Tier 1 and Tier 2 instruments

1. The minority interests and additional Tier 1 and Tier 2 instruments shall be treated in accordance with the requirements laid out in Part Two, Title II, of Regulation (EU) No 575/2013 and in Article 34a of Commission Delegated Regulation (EU) 241/2014.
2. Where the method of consolidation is the one provided for in Article 6(2), the minority interests and additional Tier 1 and Tier 2 instruments, issued by entities included in the scope of consolidation in accordance with Article 2, may be included provided that these capital items cover the losses of all the undertakings included in the prudential scope of consolidation.
3. Where the method of consolidation is the one provided for in Article 6(2), the minority interests and additional Tier 1 and Tier 2 instruments, issued by entities included in the scope of consolidation in accordance with Article 2 and owned by persons other than the entities included in the scope of consolidation which manage the entities pursuant to Article 2(3), shall be deemed to be available to cover the losses of all the undertakings included in the prudential scope of consolidation.

Chapter 2

Prudential consolidation of own funds requirements

Article 8

Consolidation of own funds requirements

1. The own funds of a Union parent undertaking, on a consolidated basis, shall amount to, at least, the highest of any of the following:
 - (a) the permanent minimum capital requirement in accordance with Article 9;
 - (b) the fixed overheads requirement calculated in accordance with Article 10;
 - (c) the K-factor requirement calculated in accordance with Article 11.
2. Where the Union parent undertaking meets, on a consolidated basis, the conditions for qualifying as a small and non-interconnected investment firm set out in Article 12(1) of Regulation (EU) 2019/2033, its own funds, on consolidated basis, shall amount to, at least, the highest of the requirements specified in paragraph 1, points (a) and (b).
3. The Union parent undertaking shall notify the group supervisor as soon as it becomes aware that it no longer satisfies or will no longer satisfy the requirements laid down in paragraphs 1 or 2.

Article 9

Consolidated permanent minimum capital requirement

1. The consolidated permanent minimum capital requirement shall amount to the sum of the following capital requirements:

- (a) the permanent minimum capital requirement of the Union parent investment firm at the individual level;
 - (b) the permanent minimum capital requirement at the individual level of the investment firms that are consolidated;
 - (c) the initial capital of the asset management companies that are consolidated;
 - (d) the initial capital of payment institutions that are consolidated;
 - (e) the initial capital of electronic money institutions that are consolidated.
2. For the purposes of paragraph 1, the individual permanent minimum capital requirements of entities established in third countries shall be the permanent minimum requirements applicable if they had been authorised in the Union.

Article 10

Consolidated fixed overheads requirement

1. For the purposes of specifying the calculation of the fixed overheads in a consolidated situation in accordance with Article 7(1) of Regulation (EU) 2019/2033, the Union parent undertaking shall use expenditure figures, where available on the basis of the scope of prudential consolidation, resulting from the applicable accounting framework on a consolidated basis.
2. Where the consolidated expenditure of the Union parent undertaking is not available under the applicable accounting framework, the consolidated fixed overheads requirement shall amount to the sum of the following expenditures:
 - (a) the expenditures of the Union parent investment firm, at the individual level;
 - (b) the expenditures of the entities, at the individual level, that are consolidated in line with the provisions of Article 6.
3. All expenditures of consolidated tied agents shall be included in the group consolidated expenditures figures only if the group's investment firms do not already include them.
4. For the purpose of adjusting the calculation of the fixed overheads, in a consolidated situation, a change, either in the form of an increase or a decrease of the business activity of one or more entities in the scope of consolidation in the group, that results in a change of 30% or greater in the projected consolidated fixed overheads of the current year, shall be considered as a material change, as referred to in Article 13(2) of Regulation (EU) 2019/2033.

Article 11

Consolidated K-factor requirement

1. The Union parent undertaking shall calculate the group consolidated K-factor requirement by adding the different K-factor requirements calculated on a consolidated basis using the methodology set out in paragraphs 2 and 3.
2. The different K-factors calculated on a consolidated basis as set out in paragraph 3 shall be multiplied by the coefficients set out in of Article 15, Table 1, of Regulation (EU) 2019/2033 for each factor.

3. The Union parent undertaking shall calculate the following factors on a consolidated basis as follows:

(a) assets under management (AUM) of the group shall be equal to the sum of the following amounts:

(i) AUM of the investment firms to be consolidated, including of third-country undertakings that would have been investment firms had they been authorised in the Union;

(ii) those AUM of asset management companies and of third-country undertakings that would have been asset management companies had they been authorised in the Union related to:

1. The provision of services referred to in Article 6(3), points (a) and (b) (i) of Directive 2009/65/EC;
2. The provision of services referred to in Article 6(4), points (a) and (b)(i) of Directive 2011/61/EU.

For points (a)(ii)(1) and (a)(ii)(2), AUM shall include only those assets for which investment advice on financial instruments referred to in Annex I to Directive 2014/65/EU is provided by those asset management companies to entities consolidated in the same group.

When delegation occurs between two entities in the group, the rules with respect to the calculation of the AUM in Article 17(2) of Regulation (EU) 2019/2033 apply.

(b) client money held (CMH) shall be calculated on a consolidated basis by summing up the amount of client money held for each consolidated entity, including financial institutions other than payment institutions and asset management companies;

(c) assets safeguarded and administered (ASA) shall be calculated on a consolidated basis as follows:

(i) ASA shall be calculated by summing up the relevant metric for each consolidated entity;

(ii) ASA shall include the provision of asset safekeeping and administration in relation to units of collective investment undertakings provided in accordance with Article 6(3), point (b)(ii), of Directive 2009/65/EC;

(iii) ASA shall include the provision of asset safekeeping and administration in relation to shares or units of collective investment undertakings provided in accordance with Article 6(4), point (b)(ii), of Directive 2011/61/EU, excluding the amount of private equity shares of alternative investment funds (AIFs);

(iv) ASA shall exclude the individual amount of ASA of the entities providing intragroup services to the consolidated financial institutions;

(d) client orders handled (COH) of the investment firm group shall be obtained by adding COH of each consolidated entity, including the provision of the service referred to in Article 6(4), point (b)(iii), of Directive 2011/61/EU, after excluding

intragroup transactions Where a group includes an investment firm which calculates K-AUM and there is another investment firm which handles orders for the former investment firm, including reception, transmission and execution of orders, then the Union parent undertaking shall not calculate K-COH on account of the orders passed by the former investment firm and handled by the latter investment firm;

- (e) net position risk (NPR) shall be obtained by applying Article 22 of Regulation (EU) 2019/2033 including investment firms and financial institutions dealing on own account or providing underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis, on a consolidated basis;
 - (f) clearing margin given (CMG) shall be obtained by summing up CMG of each individual entity to be consolidated that is approved to use K-CMG;
 - (g) trading counterparty default (TCD) shall be obtained by applying the rules in Article 26 of Regulation (EU) 2019/2033 including investment firms and financial institutions dealing on own account or providing underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis, on a consolidated basis;
 - (h) daily trading flow (DTF) of the group shall be obtained by adding the DTF of each investment firm and financial institution executing transactions in its own name either for itself or on behalf of a client or providing underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis to be consolidated after excluding intragroup transactions;
 - (i) to calculate the concentration risk (CON), the exposure value of the group shall be calculated in line with Article 36 of Regulation 2019/2033; the limit of the group with regard to CON and the exposure value excess of the group shall be obtained using the methods set out in Article 37(1) and (2) of that Regulation, respectively.
4. The K-factor requirements of tied agents shall be included in the group consolidated K-factor requirements only if the consolidated investment firms do not already include them.

Article 12

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
On behalf of the President*

[Position]

4. Accompanying documents

4.1 Draft cost-benefit analysis / impact assessment

Article 7(5) of the IFR requires the EBA to develop a draft RTS to specify the details of the scope and methods for prudential consolidation of an investment firm group, and the method and necessary details to properly implement paragraph 2 of Article 7 of the IFR.

As per Article 10(1) of Regulation (EU) No 1093/2010 (EBA Regulation), any regulatory technical standards developed by the EBA shall be accompanied by an Impact Assessment (IA), which analyses ‘the potential related costs and benefits’.

This section presents the cost-benefit analysis of the provisions included in the RTS. The analysis provides an overview of identified problems, the proposed options to address those problems and the costs and benefits of those options. Given the nature of the regulatory provisions (i.e. implementation of a new regulatory regime for investment firms), as well as the corresponding timeline this implementation, this analysis is high-level and qualitative in nature.

A. Background

As of December 2019, there were 408 investment firm groups in EEA¹⁸ (**Error! Reference source not found.**). The majority of the EEA investment firm groups is located in NL (23.8%), followed by DE (16.2%), CY (8.3%), ES (7.6%) and FR (7.4%).

Table 5 Number of EEA investment firms groups, by country

Country	Number of Investment firm groups	Share of EEA investment firm groups
AT	10	2.5%
BE	2	0.5%
BG	4	1.0%
CY	34	8.3%
CZ	7	1.7%
DE	66	16.2%
DK	21	5.1%
EE	2	0.5%
ES	31	7.6%
FI	20	4.9%
FR	30	7.4%
GR	6	1.5%
HR	0	0.0%
HU*	-	-
IE	14	3.4%
IT	12	2.9%

¹⁸ The results are based on the EBA 2020 Data collection on investment firm groups with reference date Dec-19. Data were received from all EEA NCAs except Hungary, Iceland, Liechtenstein, Romania and Slovakia.

IS*	-	-
LI*	-	-
LT	0	0.0%
LU	2	0.5%
LV	0	0.0%
MT	2	0.5%
NL	97	23.8%
NO	22	5.4%
PL	6	1.5%
PT	1	0.2%
RO*	-	-
SE	18	4.4%
SI	1	0.2%
SK*	-	-
Total	408	100.0%

Source: EBA 2020 Data collection on investment firm groups

Note: Countries not participating in the data collection are marked with a (*)

The majority of investment firm groups is headed by an investment holding company (78.3%), followed by an investment firm as union parent 19.2% (Table 6). Only a few investment firm groups are headed by a mixed financial holding (2.6%).

Table 6: Number of investment firm groups, by type of parent

Type of parent	Number of EEA IF groups	Share of total EEA investment firm groups
Union parent Investment Holding Company	306	78.3%
Union parent Investment firm	75	19.2%
Union parent mixed financial Holding	10	2.6%
Total	391	100.0%

Source: EBA 2020 Data collection on investment firm groups

Notes: The sample of the analysis are 391 investment firm groups, for which data with sufficient quality were reported.

In terms of scope of group consolidation, 25.4% of investment firm groups consolidate only investment firms without any other type of subsidiary belonging to the group.¹⁹ In the majority of groups, a financial institution is also part of the group (62.7%), where only in 25.4% and 22.1% of the groups, Ancillary Services or Tied agents belong to the groups, respectively.

Table 7 Number of EEA IF groups, by types of entities in the scope of group consolidation

Type of entities in consolidation scope	Number of EEA IF groups	Share of EEA investment firm groups
Financial Institutions	173	62.7%
Ancillary Services	70	25.4%
Tied Agents	61	22.1%
Only investment firms	70	25.4%
Total	276	100.00%

¹⁹ For the purposes of the data collection, the scope of consolidation was based on the draft RTS on prudential requirements for investment firms published by the EBA in June 2020 (EBA/CP/2020/06).

Source: EBA 2020 Data collection on investment firm groups

Notes: The sample of the analysis are 276 investment firm groups, for which data with sufficient quality were reported.

As shown in Table 8, most of the EEA investment firm groups operate in one Member State (87.0%). There are 47 investment firm groups in the EU, which operate cross-border, i.e. they have subsidiaries in other Member States or third countries.

Table 8: Number of EEA investment firm groups, by IFR/IFD classification

	Number of EEA IF groups			Share of total EEA investment firm groups
	Class 2 group	Class 3 group	Total	
Cross-border group (subsidiaries)	45	2	47	12.0%
<i>of which: subsidiaries in EU MS and third country</i>	4	1	5	1.3%
<i>of which: subsidiaries in third country only</i>	33	0	33	8.4%
<i>of which: subsidiaries in EU MS only</i>	8	1	9	2.3%
Cross-border group (branches only)	22	5	27	6.9%
Not cross-border group	164	149	313	80.1%
Total	235	156	391	100.0%

Source: EBA 2020 Data collection on investment firm groups

Notes: The sample of the analysis are 391 investment firm groups, for which data with sufficient quality were reported.

B. Problem identification / Baseline scenario

Union parent investment firms, Union parent investment holding companies and Union parent mixed financial holding companies shall comply with the obligations laid down in the IFR on the basis of their consolidated situation.

However, the IFR does not specify the scope and the methods carrying out the prudential consolidation. The lack of a common scope and consolidation methods can result in inconsistent application of the IFR for investment firm groups across the EU. This may lead to an uneven playing field across member states, unharmonised supervisory practises and an increased risk of regulatory arbitrage.

C. Policy objectives

The specific objective of the RTS is to establish a harmonised way of carrying out prudential consolidation for investment firm groups in the EU. Generally, the RTS aim to create a level playing field and enhance comparability of own funds requirements across Member States. Overall, the RTS are expected to promote the effective and efficient functioning of the EU investment firm sector.

D. Options considered, Cost-Benefit Analysis and Preferred Options

Scope of prudential consolidation

The RTS specifies which entities should be in scope of the prudential consolidation. Having regards to the principle of proportionality, NCAs are allowed to exempt certain entities from the scope when certain conditions are met. The EBA has considered the following policy options when considering these conditions:

Option 1a: Align the conditions on exemption of entities from the scope of consolidation, where possible, with the existing work regarding prudential consolidation of credit institutions

Option 1b: Develop separate conditions for exempting entities from the scope of consolidation of investment firm groups

Under Option 1a, the conditions to exempt an entity from the prudential consolidation are aligned, where possible, with Article 19 of the CRR. Similarly with the prudential scope for credit institutions, the exemptions cover small entities using the same size thresholds. They also include a backstop, which does not allow the exemption of these small entities if they collectively surpass the size thresholds set. In addition, the exemptions consist of entities situated in third countries where there are legal impediments to transfer the necessary information for prudential consolidation, entities of negligible interest and entities where their consolidation would be inappropriate of misleading. Aligning the conditions with the CRR, where possible, promotes a level playing field, where similar entities would be exempted from the prudential scope across investment firm groups and banking groups.

Under Option 1b, separate conditions could be developed. However, these could lead to regulatory arbitrage where the same entities would avoid prudential consolidation if they were part of a banking group vs an investment firm group.

Option 1a is retained.

Entity responsible for prudential consolidation when the entities in the group are connected in the sense of Article 2(3) of the draft RTS (horizontal linkages)

There may be cases when there is no entity in the group which meets the conditions in the definition for Union parent undertaking in line with the definitions in Articles 4(1)(56), (57) or (58) of Regulation 2019/2033. In this situation, the RTS specifies that the largest investment firm in the group (in terms of total assets) should be responsible for ensuring compliance with IFR on a consolidated basis. The EBA has also considered the following exception:

Option 2a: Allow competent authorities to designate the investment firm or the financial institution having the duty to prepare the consolidated financial statements for the group as the entity responsible for prudential consolidation

Option 2b: Do not consider any exception

Under Option 2a, the competent authorities may designate a different entity than the largest investment firm to be the prudential consolidator if it already prepares the consolidated financial statements for the group. This would reduce the burden for the group, as the same entity already responsible for compiling the consolidated situation of the group would also be responsible for carrying out the prudential consolidation and ensuring compliance with IFR.

Option 2b does not allow for this exception, leading to higher operational burden for the group where possibly two entities would be responsible for carrying out the consolidation of the group for different purposes.

Option 2a is retained.

Methods of prudential consolidation

The RTS considers full consolidation as the default method of prudential consolidation. The EBA has considered the following alternative methods of consolidation to act as a derogation from the default method (full consolidation):

Option 3a: Aggregation method set out in Article 22(8) and (9) of Directive 2013/34/EU

Option 3b: Equity method

Option 3c: Proportional consolidation set out in Article 26(1) of the of Directive 2013/34/EU

Option 3a is the most appropriate where two undertaking are related within the meaning of Article 22(7) points (a) and (b) of Directive 2013/34/EU, and thus one is not a subsidiary of the other. Option 3a ensures that the RTS remains appropriate for group structures where the entities are not linked through a straightforward parent-subsidiary relation.

Option 3b considers allowing the use of the equity method. The EBA assessed that this method falls outside of the scope of the mandate under Article 7(5) of the IFR as it is neither featured itself in Article 22 of the AD, nor are the types of linkages it is associated with. Therefore, it was not possible to include the equity method because of the legal basis.

Option 3c can be an appropriate method of consolidation in the case of entities with joint control. This method is available for banking groups under Article 18(4) of the CRR. However, the scope of prudential consolidation in the IFR differs from CRR and excludes undertakings without control (Article 22 (1) of the AD), dominant influence (Article 22 (2) of the AD) or horizontal linkages (Article 22 (7) of the AD). Therefore, proportional consolidation is not a relevant method in the context of IFR, given the absence of joint control entities from the scope of consolidation.

Option 3a is retained.

Consolidated K-factor requirements – Activities contributing to the calculation

Apart from investment firms, the scope of consolidation includes, financial institutions, ancillary service undertakings and tied agents. These entities may carry out activities not part of Annex I of Directive (EU) 2014/65, which are nevertheless related to specific K-factors (e.g. holding client money for performing these activities). It is therefore necessary to specify how to treat these entities and activities for the calculation of the K-factors. The EBA has considered the following options:

Option 4a: Consider only MiFID-related activities to be relevant for the calculation of K-factors

Option 4b: Consider all activities to be relevant for the calculation the K-factor metrics

Under Option 4a only those activities that are included in Annex I of Directive (EU) 2014/65 or could be associated with these activities should be considered for the calculation of the K-factor requirements for the investment firm group. This will ensure that the investment firm group is treated as a single investment firm and any non-MiFID related activities fall outside of the scope of the requirements.

Option 4b would treat all activities to contribute to the calculation of consolidated K-factor requirements. This may be excessively prudent and create an unlevel playing field relative to the individual investment firms, which count only their MiFID-related activities towards the calculation of the K-factors.

Option 4a is retained.

Consolidated K-factor requirements – Intragroup services and transactions

Entities that are part of the same investment firm may carry out services and transactions between them which are relevant for the calculation of the K-factors. The EBA has consider the following options:

Option 5a: Avoid double counting

Option 5b: Do not avoid double counting

Under Option 5a, intragroup services and transactions are excluded for the calculation of certain consolidated K-factor requirements, in particular for the K-factors 'assets safeguarded and administered' (K-ASA), 'client orders handled' (K-COH) and 'daily trading flow' (K-DTF). Moreover, the calculation of the consolidated K-factor 'assets under management' (K-AUM), avoids double-counting when there is delegation of assets' management between an investment firm and another financial entity part of the same group. This option avoids double counting and is consistent with the spirit of treating the investment firm group as a single investment firm.

Option 5b is more prudent as it does not eliminate double counting for intragroup services and transactions. However, it can unnecessarily penalise investment firm groups with high intragroup activity.

Option 5a is retained.

4.2 Views of the Banking Stakeholder Group (BSG)

The EBA Banking Stakeholder Group provided no comment on these draft RTS.

4.3 Feedback on the public consultation

The EBA publicly consulted on the draft proposal contained in this paper.

The consultation period lasted for 3 months and ended on 4 September 2021. Twenty-six responses were received, of which twenty-one were published on the EBA website.

This paper presents a summary of the key points and other comments arising from the consultation, 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 the response to different questions. In such cases, the comments, and EBA analysis are included in the section of this paper where EBA considers them most appropriate.

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

Summary of key issues and the EBA's response

Respondent to the public consultation provided comments on all articles of the draft RTS.

The comments industry stakeholders provided most attention to are the followings:

- 1) **Articles 2 to 5 exceeding the mandate:** Several respondents, often using the same wording, consider Article 2 to 5 as exceeding the mandate of the EBA. The legal reasoning behind is that, different from article 18 of the CRR, the IFR does not include explicitly references to “significant influence” or “unified management” empowering the Delegated Act. Such proposals are not taken on board, on the basis that they are needed (for IF groups as well as for banking groups) to avoid regulatory arbitrage.
- 2) **Extraterritorial application:** Several respondents highlighted the need to consolidate only entities within the EU. Third-country entities part of the group would then be outside the prudential consolidation. Among others, this was motivated with competitive advantage given to non-EU competitors for which similar requirements would not apply. In contrast with that suggestion, some respondent also noted that third-country entities are subject to stringent requirements, and therefore there is no need to consolidate them.
- 3) **Further exclusion of certain entities from prudential consolidation:** Some respondent noted that the draft RTS does not allow CAs to completely exclude entities from the prudential consolidation, which is instead allowed under Article 19 of the CRR. Some of them also claim that CAs should be able to also exclude third-country entity. It is explained in the EBA analyses,

that criteria for exclusions are already envisaged in the IFR and further delegation of powers in the RST would not be in scope of the draft RTS and altogether not needed on top of the IFR text.

- 4) **Stricter requirements with respect to the accounting directive:** Some of the respondents claim that the draft RTS is stricter, in some case, than the Accounting Directive it refers to. The EBA analyses explain that the application of the prudential requirements may actually require a stricter approach (given the different objectives) to avoid regulatory arbitrage and harmonisation.
- 5) **Alternative methods as ‘default’ methods together with the full consolidation:** On several aspects, respondent suggested to consider some of the alternative consolidation methods (e.g., aggregation method and proportional consolidation) as ‘equally applicable’ as default method as the full consolidation. One of them further suggested that, in some situation, proportional consolidation should not be subject to approval. It might be worth considering some of these aspects as they impact the workload of the CA in approving the consolidation methods for IF groups.
- 6) **Scope and methods for asset management companies in an investment firm group:** The treatment of management companies raised many technical questions. These refer mostly to the applicability of certain K-factors to AIF and UCITS asset management companies which were not clear from the consultation paper. They also refer to the possibility to offset/exclude of certain intragroup positions from the K-factors calculations.
- 7) **Further exemption of intragroup positions:** Several respondents called for the possibility to offset/exclude intragroup positions from the K-factors calculation. For example, it was recommended allowing exclusions in the context of COH and that all K-factors are clarified when intragroup positions involve consolidated AIF/UCITS asset management companies.

Nr.	Comments	Summary of responses received	EBA analysis	Amendments to the proposals
1	Group capital test	The exemption from the consolidation requirement (i.e. Article 8 of the IFR - Group Capital test) should be widely allowed.	Article 8 of the IFR is not in the scope of this EBA mandate, nor are the criteria for its application, which are listed in the IFR text and left to the CA for their application.	No amendment needed to the draft RTS.
2	Scope of the mandate in Article 7(5) of the IFR – requirement to ensure proper consolidation	<p>The RTS should not define new responsibilities, such as requiring an IF to ensure consolidation of non-IFR entities in an IF group when it is not the parent undertaking and has no legal means to do so.</p> <p>The EBA should clarify that such obligation for the parent undertaking of an investment firm group does not go beyond and is limited by the boundaries applicable to a subsidiary under the laws of the country it is established under (e.g. data protection or corporate law rules of such country).</p>	The requirement to implement arrangements, processes, and mechanisms to ensure proper consolidation is provided in Article 7(1) of the IFR. The mandate under Article 7(5) of the IFR addresses only the scope and methods for prudential consolidation and not the elements presented in Article 7(1) of the IFR.	No amendment needed to the draft RTS.
3	Scope of entities in the perimeter for consolidation – exclusion of entities and/or activities domiciled outside the EU	<p>Consolidation should not include entities or activities that are not regulated or not locally capitalized.</p> <p>K-factors are not appropriate measures (e.g. K-DTF) for US and Asia-Pacific market structures, they should not be applied to entities in these geographical areas.</p>	<p>The scope of the prudential consolidation is set by the IFR, as described in Article 4(1)(11) of the IFR.</p> <p>In line with Article 4(1)(11) of the IFR, the consolidated situation conditions “shall also apply to undertakings established in third countries, which, were they established in the Union,</p>	No amendment needed to the draft RTS.

		The EBA should only include the activities of EU entities when calculating the various K-factors instead of broadly applying the K-factors methodology to non-EU entities that happen to be part of an EU group.	would fulfil the definitions of those terms”.	
4	Scope of entities in the perimeter for consolidation – the case of groups with parent undertakings domiciled in third countries	Where consolidation groups have a parent entity within a third country and subsidiaries both in the third country and the EU, it is recommended to continue the current approach to consolidated supervision by the parent entity’s competent authority. Solo reporting to the relevant EU national authority would be required for all EU regulated subsidiary entities of a third country group.	Establishing a group structure in the EU is not mandatory, unless one meets the conditions for an IPU (Article 21b of the CRD introduces the rules on the IPU functioning) or there is a strategic decision to organise in a group structure. However, in line with the definition of consolidated situation in Article 4(1)(11) of the IFR, there is a need to designate an entity in the EU which carries out the consolidation and which, in line with the definition of Union parent undertaking in Article 4(1) points (56), (57) and (58) in the IFR, needs to be located in a Member State.	No amendment needed to the draft RTS.
5	Scope of entities in the perimeter for consolidation – the case of ancillary services undertakings	There is no distinction (in the draft RTS) between outsourcing and ancillary services undertakings.	The definition of consolidated situation in Article 4(1)(11) of the IFR references ancillary services undertakings as part of the scope of consolidation of investment firm groups, while the definition of ancillary services undertaking is provided in Article 4(1)(1) of IFR.	No amendment needed to the draft RTS.

6	Scope of entities in the perimeter for consolidation – the case of AIFMs and UCITS	The RTS should specify that UCITS and AIF are not relevant undertakings to consolidate in an IF group.	UCITS and AIF management companies belong to the category of financial institutions according to the definition in Article 4(1)(26) of CRR. Therefore, they belong to the scope of consolidation under IFR.	No amendment needed to the draft RTS.
7	Scope of entities in the perimeter of consolidation – types of linkages (Articles 2 to 5 in the draft RTS)	<p>Contractors performing e.g. delegated portfolio management risk being part of an IF group according to the RTS.</p> <p>In the further alternative, if EBA maintains its approach, we urge to clarify that, in the absence of other circumstances leading to the formation of a regulatory group case of generic or market standard outsourcing, such as a delegation of portfolio management services of the investment funds or the AIF or UCITS management companies, respectively, (which involves standard contractual termination rights for the undertaking delegating the right) in the above sense does not lead to the formation of a regulatory group.</p>	While the notion of significant influence is no longer featured in the draft RTS, the criteria for undertakings to be identified as ‘entities’ in the scope of prudential consolidation according to Article 2 paragraphs 1, 2 and 3 are presented in the draft RTS, based on the provisions in Article 22 of Directive (EC) 2013/34 (‘the Accounting Directive’), which is the main regulatory reference due to the definition of ‘investment firm group’ in Article 4(1)(25) of the IFR.	The draft RTS has been amended to better align to the provisions in Article 22 of Directive (EU) 2013/34 (the Accounting Directive, AD).
8	Scope of entities in the perimeter of consolidation – types of linkages (Articles 2 to 5 of the draft RTS)	In the Accounting Directive, paragraphs 1 to 6 are compulsory, but paragraph 7 depends on the discretion of the Member State. Article 4(1)(25) of IFR does not refer explicitly to paragraph 7. Therefore, undertakings related within the meaning of Article 22(7) of Directive 2013/34/EU should not be automatically part of the scope of an IF group.	EBA acknowledges the comment. In accordance with the corresponding treatment for credit institutions, entities in paragraph 22(7) of the AD may become part of the scope of consolidation subject to competent authority consideration.	RTS amended to reflect this position.

9	Scope of entities in the perimeter of consolidation – types of linkages (Article 2 of the draft RTS)	Article 2(1) of the RTS goes beyond the definition of an investment firm group. Such an approach would not be in line with the definition set out in Article 4(1)(25) IFR, according to which, there is no express reference to paragraph 7 as opposite to Article 18(3) of the CRR.	Article 4(1)(25) of IFR does not distinguish between paragraphs of Article 22 of Directive 2013/34/EU, so any condition given may apply to determine if an undertaking is part of an IF group.	No amendment needed to the draft RTS.
10	Scope of entities in the perimeter of consolidation – types of linkages (Article 2 of the draft RTS)	The IFR does not contain a provision resembling Article 18(5) and (6) CRR: According to Article 18(5) and (6) CRR, competent authorities shall determine whether consolidation is required in case of other participations or capital ties or significant influence without a participation or other capital ties and single management other than pursuant a contract, memorandum or articles of association. There is neither a comparable regulation in the IFR nor a mandate to specify such cases in a Draft RTS under the IFR.	Given that the definition of investment firm group, as defined in Article 4(1)(25) of the IFR, refers directly to Article 22 of the AD in its entirety, it is within the scope of the mandate to provide rules based on any and all paragraphs under this Article. While the notion of significant influence is not included in the draft RTS (as it is not part of Article 22), the cases of 'unified management' are considered as part of the regulation in line with provisions in Article 22(2) of the AD.	The draft RTS has been amended to better align to the provisions in Article 22 of the Accounting Directive.
11	Scope of entities in the perimeter of consolidation – types of linkages (Article 2 of the draft RTS)	In relation to the concept of "significant influence without participation or capital ties", the hallmarks of significant influence provided for in Article 3(2) of the draft RTS on prudential consolidation of investment firms groups are too broad and (i) could be difficult to apply; (ii) could create uncertainty; and (iii) may not reflect the correct relationship between an investment firm and other firms (within the scope of consolidation) with whom it	The notion of significant influence is no longer included in the draft RTS as it is not part of Article 22 of the AD.	The draft RTS has been amended to better align to the provisions in Article 22 of the Accounting Directive.

		may share personnel, services or a commercial relationship.		
12	Scope of entities in the perimeter of consolidation – decisions on types of linkages (Articles 2 to 6 of the RTS)	Articles 6 (Full consolidation) and 7 (Proportional consolidation) of the RTS have no legal basis to require consolidation and to remove from the competent authorities the discretion not to apply this consolidation.	Based on Article 22 of the AD, the requirement to consolidate is the starting point of the draft RTS, which continues by clarifying which consolidation method is available for different types of linkages between entities. However, the draft RTS has been amended as compared to the Consultation Paper; the methods are now limited to full consolidation and aggregation method.	The draft RTS has been amended to better align to the provisions in Article 22 of the Accounting Directive.
13	Scope of entities in the perimeter of consolidation – decisions on types of linkages (Articles 2 to 5 of the RTS)	The concepts of managed on a unified basis and significant influence are already used in other contexts and their meaning is well understood. We think the EBA's proposed approach may create tensions between different sets of rules or result in anomalous results, under which a firm needs to take one approach for the purposes of IFR and a different approach under other regimes.	The notion of significant influence is no longer included in the draft RTS as it is not part of Article 22 of the AD. With regards to unified management, the RTS is in line with the provisions in Article 22(7) to 22(9) of the AD, thus maintaining the understanding on the notion of single management.	Article 3 in the draft RTS published for public consultation has been dropped.
14	Scope of entities in the perimeter of consolidation – determination of union parent undertaking where entities are connected via linkages described in Article 2(3) of the draft RTS (Article 5(2) of the draft RTS)	The proposal in Article 5(2) of the draft RTS appears to be a banking approach. Considering investment firms' different business models, where some are balance sheet intensive, while others are off-balance sheet intensive, there should be additional metrics to make this decision. An approach similar to the alternative test in FICOD should be	Given that this approach should be available only in a very limited number of situations as presented in Article 5 of the draft RTS presenting the conditions related to entities managed on a unified basis, a FICOD-type approach would be too complex to implement. Instead, the chosen approach has the merit of being simple to implement.	No amendment needed to the draft RTS.

		considered, where the decision is made based on a combination of on-balance sheet, off-balance sheet and income metrics.		
15	Scope of entities in the perimeter for consolidation – criteria for exclusion from the scope of consolidation	<p>To provide continuity and minimize adaption costs for existing groups, EBA could make use of its mandate in Article 7(5) IFR to further specify the details of the scope of prudential consolidation by introducing a provision for investment firm groups comparable to Article 19 CRR.</p> <p>Although Article 8 IFR enables NCAs to allow sufficiently simple group structures to comply with a group capital test instead of complying with IFR on a consolidated basis, it does not foresee a general exclusion comparable to the one of Article 19 CRR.</p>	The EBA acknowledges the relevance of the comment, although conditions for exemptions are included in Articles 6 and 7(4) of the IFR.	An article introducing objective thresholds for exclusion from the perimeter of consolidation has been included in the RTS (current Article 3).
16	Notification process by the NCAs	The RTS should specify when the NCA would notify the firm of the method of consolidation they are to apply, and how long after the decision is confirmed that consolidation should be altered. Article 32 of Directive 2013/36/EU provides an example of how derogations can operate and be monitored.	<p>The notification process on the consolidation method does not fall within the scope of the EBA mandate.</p> <p>Therefore, also the transition process remains at the discretion of competent authorities.</p>	No amendment needed to the draft RTS.
17	Methods for consolidation – availability of financial statements (Article 6 of the RTS)	One respondent noted that in several cases no consolidated financial statements are prepared at the level of the Union parent undertaking (e.g. 1) the Union parent undertaking is itself	In line with the provisions in the IFR, the parent undertaking of an investment firm group in the European Union meets any of the definitions in either points (56), (57) or (58) of Article 4(1) of the IFR.	No amendment needed to the draft RTS.

		the subsidiary of an ‘ultimate’ parent undertaking incorporated in the same Member State and the latter ‘ultimate’ parent undertaking, which prepares consolidated financial statements involving the subgroup of the Union parent undertaking, does not qualify as a relevant entity; 2) the Union parent undertaking is itself the subsidiary of credit institution / investment firm / holding company incorporated in a third country and the latter parent undertaking prepares consolidated financial statements on the basis of equivalent accounting standards).	Providing consolidated financial statements should also comply with this pattern.	
18	Methods for consolidation – type of methods available (Article 6 of the RTS)	The aggregation method should be used by default instead of the full consolidation, as it is equally suitable.	By aligning the draft RTS with provisions in Article 22 of the AD, the full consolidation method is the default method, which also implies recognising an advantage to being part of a group. In line with Article 22 of the AD, the aggregation method could only be available to entities connected via specific types of linkages.	The draft RTS was amended to align with the AD.
19	Methods for consolidation – type of methods available (Article 6 of the RTS)	A firm should not be obligated to obtain permission from the competent authority if it follows the default treatment for joint control by using proportional consolidation.	The proportional consolidation has been excluded from the draft RTS on the basis of the fact that joint control is not among the type of linkages considered under Article 22 of the AD.	Type of linkage unavailable for the draft RTS therefore the method was removed from the draft legal text.

20	Methodology for the consolidation of capital requirements – FOR (Article 10 of the RTS)	The thresholds which should be used to determine a ‘material change’ in the consolidated FOR have not been clarified.	The EBA acknowledges the issue.	Amendment included in Article 10(4) of the draft RTS.
21	Methodology for the consolidation of capital requirements – treatment of intragroup holdings in the context of K-factors’ calculation (Article 11 of the RTS)	The possibility to offset intragroup transactions / positions is clear in Article 11(3) for K-NPR, K-TCD and K-DTF. However, the same should be clarified for all other K-factors that may be affected by intragroup positions and transactions.	The EBA acknowledges the relevance of the comment. However, the netting has already been taken into account in the rules for NPR, TCD, DTF. For the other factors netting should not be allowed, with the exception of COH, for which the EBA decided to amend the draft RTS allowing a treatment similar to the one for DTF.	Amendment included in Article 11(3)(d) of the RTS.
22	Methodology for the consolidation of capital requirements – treatment of management companies in the context of the K-AUM calculation (Article 11(3)(a) of the RTS)	When there is a management company in the group, the method of calculation of assets under management should not be applied to the calculation of the capital requirements of each management company in order to avoid double counting.	The EBA acknowledges the relevance of the comment and has amended the draft RTS to further clarify the rules in this case in line with the provisions in Article 17(2) of the IFR.	Amendment included in Article 11(3)(a) of the RTS.
23	Methodology for the consolidation of capital requirements – treatment of AIFMs/UCITS without additional authorisations under MiFID in the context of K-factors’ calculation (Article 11 of the RTS)	Should AIFMs/UCITS that do not have additional authorizations under MiFID be included in the scope of the consolidated K-factor?	UCITS and AIF management companies belong to the category of financial institutions according to the definition in Article 4(1)(26) of CRR. Therefore, they belong to the scope of consolidation under IFR and contribute to the capital requirements via the permanent minimum capital requirement and FOR. However, the contribution of these entities to the consolidated K-factor requirements would be null, unless they	No amendment needed to the draft RTS.

			offer the additional MiFID services as provided for in the UCITS and AIFM directives.	
24	Methodology for the consolidation of capital requirements – calculation of K-COH (Article 11(3)(d) of the RTS)	Need to align the K-COH calculation with the requirements in Article 20 of the IFR with regards to exclusion of processed orders which originate from servicing a client's investment portfolio when the investment firm is already calculating the assets under management of that client.	The EBA acknowledges the relevance of the comment and decided to amend the legal text accordingly.	Amendment included in Article 11(3)(d) of the draft RTS.
25	Methodology for the consolidation of capital requirements – calculation of K-AUM, K-CMH and K-ASA (Article 11(3) of the RTS)	It should be clarified that K-AUM, K-CMH and K-ASA should be calculated only on the basis of the MiFID business.	The EBA acknowledges the relevance of the comment.	The draft RTS has been amended with respect to Article 11(3) where points (a), (b) and (c) have been added to address this comment.
26	Methodology for the consolidation of capital requirements – inclusion of AIFMs' activities in the calculation of the K-factors (Article 11 of the RTS)	The inclusion in the prudential consolidation of asset management companies would make the framework more complex than the current approach, with specific reference to Article 95 of the CRR.	Asset management companies are listed in the definition of financial institutions in the corresponding definition in Article 4.1.(14) of the IFR. In line with Article 4(1)(1)) of the IFR, financial institutions are part of the prudential consolidation. Moreover, in line with Article 4(1)(14) of the IFR, the definition of financial institution includes asset management companies. Finally, third country entities that would have been asset management companies had they been authorised in	The relevant article in the draft RTS has been clarified.

			the Union are included in the scope of consolidation via the definition of consolidated situation in Article 4(1)(11) of the IFR.	
27	Methodology for the consolidation of capital requirements – calculation of K-factors (Article 11 of the RTS)	Is the calculation of CMH, ASA and COH as described in Article 11(3) applicable to all companies in a consolidation group?	Clarifications were brought to Article 11(3) of the draft RTS to shed light on how the capital requirements for different types of financial institutions count towards the consolidated capital requirements	The relevant article in the draft RTS has been clarified.

