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#### COVER NOTE

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From:	Mr Jose Manuel CAMPA, EBA Chairperson, European Banking Authority
date of receipt:	15 April 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	Submission of the draft regulatory technical standards on the methods of prudential consolidation under Article 18 of the Capital Requirements Regulation ("CRR")
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Delegations will find attached, for information, the letter mentioned above and its annex.

Encl.: [...]

E MAIL

THE CHAIRPERSON

IM 003981 2021  
15.04.2021



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**EBA-2021-D-3466**

John Berrigan  
Director General  
Directorate-General for Financial Stability,  
Financial Services and Capital Markets Union (FISMA)  
European Commission (DG FISMA)  
Rue de Spa 2  
1000 Brussels  
Belgium

15 April 2021

**Subject: Submission of the draft regulatory technical standards on the methods of prudential consolidation under Article 18 of the Capital Requirement Regulation ('CRR')**

Dear Mr Berrigan,

In accordance with paragraph 9 of Article 18 of Regulation (EU) No 575/2013 (the Capital Requirement Regulation, 'CRR'), as amended by Regulation (EU) 2019/876, the EBA is required to develop draft regulatory technical standards (RTS) specifying conditions in accordance with which consolidation shall be carried out in the cases referred to in paragraphs 3 to 6 and paragraph 8 of Article 18 of the CRR.

In this regard, it is my pleasure to submit to you today these draft regulatory technical standards, as endorsed by the EBA's Board of Supervisors.

These draft RTS were developed following the procedure described in the relevant provisions of Regulation (EU) No 1093/2010 and are being published on the EBA's public website. All relevant information – notably the background and rationale and the impact assessment – will be available on the EBA's public website.

I look forward to the completion of the process of adoption of these RTS.

Yours sincerely,

José Manuel Campa

CC:

Irene Tinagli, Chair of the Committee on Economic and Monetary Affairs (ECON), European Parliament

João Leão, Portuguese Minister of State and Minister of Finance, Presidency of the Council of the EU

Tuomas Saareheimo, Chair of Economic and Finance Committee, Council of the European Union

Jeppe Tranholm-Mikkelsen, Secretary-General, Council of the European Union

Martin Merlin, DG FISMA, Director Directorate D

Nathalie Berger, DG FISMA, Head of Unit, Unit D1, Bank Regulation and Supervision

Sebastian Hrovatin, DG FISMA, Deputy Head of Unit, Unit D1, Bank Regulation and Supervision

Dominique Thienpont, DG FISMA, Legal Counsellor to the Director Directorate D.

Encl:

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



Brussels, **XXX**  
[...](2021) **XXX** draft

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

**of **XXX****

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

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

Third subparagraph of Article 18(9) of Regulation (EU) No 575/2013 ('the Regulation') empowers the Commission to adopt, following submission of draft regulatory technical standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation No (EU) 1093/2010, delegated acts specifying conditions in accordance with which consolidation shall be carried out in the cases referred to in paragraphs 3 to 6 and in paragraph 8 of Article 18 of the Regulation.

In accordance with Article 10(1) of Regulation No (EU) 1093/2010 establishing the EBA, the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

In accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has carried out a public consultation on the draft regulatory technical standards submitted to the Commission in accordance with the second subparagraph of Article 18(9) of the Regulation. A consultation paper was published on the EBA internet site on 09 November 2017, and the consultation closed on 09 February 2018. Moreover, the EBA invited the Banking Stakeholder Group set up in accordance with Article 37 of Regulation No (EU) 1093/2010 to provide advice on them. Together with the draft regulatory technical standards, the EBA has submitted an explanation on how the outcome of these consultations has been taken into account in the development of the final draft regulatory technical standards submitted to the Commission.

Together with the draft regulatory technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has submitted its impact assessment, including its analysis of the costs and benefits, related to the draft regulatory technical standards submitted to the Commission. This analysis is available at <https://www.eba.europa.eu/regulation-and-policy/accounting-and-auditing/rts-on-methods-of-prudential-consolidation>, pages 24-29 of the Final Report on the draft technical standards.

### 3. LEGAL ELEMENTS OF THE DELEGATED ACT

The provisions of this delegated act specify the conditions for the application of different methods of prudential consolidation<sup>1</sup> or of the equity method in the cases referred to in paragraphs 3 to 6 and in paragraph 8 of Article 18 of the Regulation.

In line with the [Guidelines on the identification and management of step-in risk](#) published by the Basel Committee on Banking Supervision (BCBS), the draft regulatory technical standards also include a list of elements to be taken into account by competent authorities in assessing whether an undertaking should be fully or proportionally consolidated for prudential purposes, considering the risk of step-in for the banking group.

Finally, in order to ensure consistency with the own funds framework established in the Regulation and to avoid the recognition of undue capital benefits, the draft regulatory technical standards specify the conditions for the inclusion in the consolidated own funds of the amounts of Common Equity Tier 1 items and of the Additional Tier 1 and Tier 2 capital instruments issued by the undertakings included in the prudential scope of consolidation and owned by persons other than such undertakings, in those cases where consolidation is required pursuant to Article 18(3) to (6) or (8) of the Regulation.

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<sup>1</sup> I.e. full consolidation, proportional consolidation or the method of consolidation set out in paragraphs 8 and 9 of Article 22 of Directive 2013/34/EU.

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

of **XXX**

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

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 642/2012<sup>2</sup>, and in particular Article 18(9) thereof<sup>3</sup>,

Whereas:

- (1) Article 18(3) of Regulation (EU) No 575/2013 covers cases of prudential consolidation of groups of undertakings that are related to each other within the meaning of Article 22(7) of Directive 2013/34/EU of the European Parliament and of the Council<sup>4</sup> where a parent-subsidiary relationship does not exist. The absence of a parent-subsidiary relationship creates the need to determine the entity at which level the requirements of that Regulation should be applied on a consolidated basis in such cases. Moreover, in those cases, the most appropriate method of prudential consolidation should be the method set out in paragraphs 8 and 9 of Article 22 of Directive 2013/34/EU ('aggregation method') in line with the rules specified in that Directive.
- (2) In cases of participations in institutions or financial institutions managed by an undertaking included in the consolidation together with one or more undertakings not included in the consolidation where proportional consolidation is required pursuant Article 18(4) of Regulation (EU) No 575/2013, the unanimous consent of those undertakings concerning the decisions about the institution's or financial institution's relevant activities should be required for the application of that method of prudential consolidation in line with the definition of joint arrangement specified in the international accounting standards as applicable under Regulation (EC) No 1606/2002<sup>5</sup>.

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<sup>2</sup> OJ L 176, 27.6.2013, p.1.

<sup>3</sup> OJ L [...], [...], p. [...]

<sup>4</sup> 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).

<sup>5</sup> Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p.1).

- (3) Points (a) and (b) of Article 18(6) of Regulation (EU) No 575/2013 refer to the supervisory requirements for prudential consolidation in the case of significant influence over one or more institutions or financial institutions but without participation or other capital ties, and in the case where those institutions or financial institutions are placed under single management other than pursuant to a contract, memorandum or articles of association, respectively. To enable competent authorities to determine whether a situation of significant influence exists, several indicators of significant influence should be taken into account by those authorities. Moreover, a situation of single management should only be determined where the competent authority has concrete evidence that there is an effective coordination of the financial and operating policies of such institutions or financial institutions. Such situation would not be expected to occur in case of institutions, financial institutions or ancillary services undertakings controlled by a Member State's central, regional or local government unless there is evidence to the contrary.
- (4) The Basel Committee on Banking Supervision (BCBS) has published Guidelines on identification and management of step-in risk<sup>6</sup> which include several indicators that should be used by institutions in identifying which entities can give rise to step-in risk. According to the BCBS Guidelines, 'step-in risk' is the risk that a bank decides to provide financial support to an unconsolidated entity (i.e. not fully or proportionately consolidated) that is facing stress, in the absence of, or in excess of, any contractual obligations to provide such support. Pursuant to the BCBS Guidelines, when a bank identifies that there is significant step-in risk, it needs to determine the appropriate measures based on the nature and extent of the anticipated step-in support in each case. These measures encompass, among others, also the inclusion of the entities concerned in the regulatory scope of consolidation. In line with the BCBS Guidelines, several indicators should be considered by institutions and competent authorities to conclude whether certain undertakings should be fully or proportionally consolidated pursuant to Article 18(5), (6)(a) or (8) of Regulation (EU) No 575/2013, as applicable, taking into account the risk of step-in these undertakings may pose to an institution. Nevertheless, institutions should also consider alternative measures to address step-in risk under their risk management procedures and internal capital adequacy assessment process (ICAAP). In addition, competent authorities may consider other measures to address the potential risk posed by those undertakings under the supervisory review and evaluation processes (SREP). In the context of the large exposures framework, the EBA has also issued guidelines on limits on exposures to shadow banking entities which carry out banking-like activities outside a regulatory framework, which specify the methodology that should be used by institutions to set limits, as part of their internal processes, on their individual and aggregate exposures to shadow banking entities.
- (5) In particular, in order to determine whether full or proportional consolidation is needed pursuant to Article 18(8) of Regulation (EU) No 575/2013 in the case of subsidiaries or undertakings in which an institution holds a participation where that subsidiary or undertaking is not an institution, financial institution or ancillary services undertaking, and where there is a substantial risk of step-in and provided that the undertaking is not an insurance or reinsurance undertaking, or an insurance holding undertaking, among others, competent authorities would be expected to scrutinise, at a minimum, certain categories of undertakings such as special purpose entities that do not qualify as securitisation special purpose entities as defined in point (2) of Article 2 of Regulation (EU) 2017/2402<sup>7</sup> for which

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<sup>6</sup> Guidelines of the Basel Committee on Banking Supervision on the identification and management of step-in risk, Basel, October 2017.

<sup>7</sup> Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and



the conditions for the transfer of significant credit risk established in Article 244 of Regulation (EU) No 575/2013 are applicable, as well as those undertakings performing any of the activities referred to in point (b) of Article 89(1) of Regulation (EU) No 575/2013.

- (6) In order to ensure consistency with the own funds framework under Regulation (EU) No 575/2013 and to avoid the recognition of undue capital benefits, in those cases where consolidation is required pursuant to Article 18(3) to (6) or (8) of Regulation (EU) No 575/2013 the inclusion in the consolidated own funds of the amounts of Common Equity Tier 1 items and of the Additional Tier 1 and Tier 2 capital instruments issued by the undertakings included in the prudential scope of consolidation and owned by persons other than such undertakings, as well as the related share premium accounts, should also be based on the provisions established in Articles 81 to 88 of that Regulation.
- (7) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority.
- (8) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010<sup>8</sup>,

HAS ADOPTED THIS REGULATION:

*Article 1*  
*Definitions*

- 1. For the purposes of this Regulation, the following definitions shall apply:
  - (1) ‘relevant activities’ means relevant activities as defined in Appendix A to the Annex to Commission Regulation (EC) 1254/2012 (‘Annex relating to IFRS 10’);
  - (2) ‘risk mitigants’ means any applicable laws, regulations, rules or contractual arrangements that restrict an institution’s ability to provide financial support to an undertaking in stressed conditions;
  - (3) ‘participating undertakings’ means the undertakings that jointly control any of the following:
    - (a) an institution or financial institution as referred to in Article 3(1) of this Regulation, or;
    - (b) an undertaking which is not an institution, financial institution or ancillary services undertaking as referred to in point (a) of Article 7(3) of this Regulation.

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standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p.35).

<sup>8</sup> 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, 15.12.2020, p. 12).

- (4) ‘capital ties’ means the ownership, direct or indirect, of capital of an undertaking, including a participation as defined in Article 4(1)(35) of Regulation (EU) No 575/2013.
- (5) ‘significant influence’ means the power to participate in the financial and operating policy decisions of an undertaking, where that undertaking does not qualify as a subsidiary as defined in point (16) of Article 4(1) of Regulation (EU) No 575/2013 and is not jointly controlled as referred to in Article 3(1) or in point (a) of Article 7(3) of this Regulation.

## *Article 2*

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

1. Where, in the case of groups of undertakings that are related to each other within the meaning of Article 22(7) of Directive 2013/34/EU, consolidation is required pursuant to Article 18(3) of Regulation (EU) No 575/2013, the following entity shall be responsible for ensuring compliance with the requirements referred to in Section 1 of Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013 on the basis of the consolidated situation of all undertakings of the group:
  - (a) the institution, where there is only one institution within the group;
  - (b) the credit institution with the largest balance sheet total, where there are several credit institutions within the group;
  - (c) the investment firm subject to Regulation (EU) No 575/2013 with the largest balance sheet total, where the group does not include any credit institution.
2. For the purposes of paragraph 1, the balance sheet total shall be calculated on the basis of the latest audited consolidated financial statements or, where consolidated financial statements are not required to be prepared in accordance with the applicable accounting framework, the latest audited individual financial statement of the institution.
3. In particular cases, the competent authorities responsible for exercising supervision on a consolidated basis pursuant to Article 111(4) to (6) of Directive 2013/36/EU may waive the criteria referred to in paragraph 1, and designate another entity within the group subject to Regulation (EU) No 575/2013 as responsible for ensuring compliance with the requirements referred to in Section 1 of Chapter 2 of Title II of Part One of that Regulation on the basis of the consolidation situation of all undertakings of the group, where the application of the criteria referred to in paragraph 1 would be inappropriate. For these purposes, those competent authorities shall take into account any decision taken in accordance with Article 111(6) of Directive 2013/36/EU or, in the absence of such decision, the institutions concerned and the relative importance of their activities in the relevant Member States or whether they are required to prepare consolidated financial statements for the group in the cases referred to in Article 22(7) of Directive 2013/34/EU. In such cases, the institution with the largest balance sheet total shall have the right to be heard, before the competent authorities take the decision.

4. In the cases referred to in this Article, the competent authorities responsible for exercising supervision on a consolidated basis pursuant to Article 111(4) to (6) of Directive 2013/36/EU shall permit or require the use of the method of consolidation provided for in Article 22(8) and (9) of Directive 2013/34/EU
5. An undertaking that is related to one or more undertakings within the meaning of Article 22(7) of Directive 2013/34/EU need not to be included in the consolidation pursuant to this Article in the same cases and in accordance with the same conditions as set out in Article 19 of Regulation (EU) No 575/2013.

### *Article 3*

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

1. In the case of participations in institutions or financial institutions managed by an undertaking included in the consolidation together with one or more undertakings not included in the consolidation, the consolidating supervisor shall require proportional consolidation pursuant to Article 18(4) of Regulation (EU) No 575/2013, where all of the following conditions are met:
  - (a) the participating undertakings jointly control a majority of the shareholders' or members' voting rights in the institution or financial institution concerned or have the ability to direct jointly that institution's or financial institution's relevant activities, pursuant to a legally enforceable contractual arrangement between them or to clauses of the institution's or financial institution's memoranda or articles of association;
  - (b) the decisions about the institution's or financial institution's relevant activities require the unanimous consent of all the participating undertakings;
  - (c) the contractual arrangement referred to in point (a) of this paragraph or the clauses of the institution's or financial institution's memoranda or articles of association stipulate that the liability of the participating undertakings is limited to the share of capital they hold in the institution or financial institution concerned.
2. In the cases referred to in this Article, proportional consolidation shall be carried out on the basis of the share of capital held in the concerned institution or financial institution and in accordance with Article 26(2) of Directive 2013/34/EU.

### *Article 4*

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

1. In the case of participations or capital ties in institutions or financial institutions other than those referred to Articles 18(1) and (4) of Regulation (EU) No 575/2013, competent authorities may determine whether consolidation is to be carried out and, in such a case, permit or require the use of the equity method pursuant to Article 18(5) of Regulation (EU) No 575/2013 unless they determine the proportional or full consolidation of the institution

or financial institution concerned to be required in accordance with the conditions set out in paragraphs 2 to 5 of this Article.

2. The competent authority shall make the determination referred to in paragraph 1 on the basis of an assessment of the risks posed by the institution or financial institution concerned to the institution, taking into account the extent and the effectiveness of any risk mitigants and the impact on the prudential requirements of the institution on a consolidated basis that could result from the application of full or proportional consolidation.
3. For the purposes of the assessment referred to in paragraph 2, the institution shall provide the competent authority, upon request, with all necessary information in particular with regard to the following elements:
  - (a) the overall ownership structure of the institution or financial institution concerned, having regard, in particular, to whether shares or equivalent ownership rights and voting rights, including potential voting rights as referred to in Article 5(5), are distributed across a large number of shareholders, owners or members, or the institution is the main shareholder, owner or member of the institution or financial institution;
  - (b) whether the institution acts as sponsor by managing or advising the institution or financial institution concerned, placing the institution's or financial institution's securities into the market, or providing liquidity and or credit enhancements to the institution or financial institution, or whether the institution is an important investor in its debt or equity instruments, or there is other contractual and non-contractual involvement exposing the institution to the risks or to equity-like returns from the assets of the institution or financial institution concerned or related to its performance;
  - (c) whether the institution is effectively involved in the decision-making process of the institution or financial institution concerned, the degree to which the institution exercises influence over it, or whether the institution or financial institution is considered to be controlled in accordance with the applicable accounting framework;
  - (d) whether the institution receives critical operational services from the institution or financial institution concerned which cannot be replaced in a timely fashion without excessive cost;
  - (e) whether the credit rating of the institution or financial institution concerned is based on the institution's own rating;
  - (f) whether specific features relating to the composition of the investor base of the institution or financial institution concerned exist, with particular reference to whether the other investors in the institution or financial institution have a close commercial relationship with the institution, their ability to bear losses or their ability to dispose of their financial instruments;
  - (g) whether the institution or financial institution concerned and the institution have a common customer base or are involved in the commercialisation of each other's products;

- (h) whether the institution and the institution or financial institution concerned have the same brand;
  - (i) whether the institution has already provided financial support to the institution or financial institution concerned in case of financial difficulties.
- 4. Competent authorities may in particular require proportional consolidation of the institution or financial institution referred to in paragraph 1 according to the share of capital held in that undertaking where there is a contractual agreement between the institution and one or more shareholders, owners or members of the institution or financial institution concerned to jointly provide financial support to the institution or financial institution or there is strong evidence that they would financially support the institution or financial institution according to the share of capital held in it.
- 5. Competent authorities may, in particular, require full consolidation of the institution or financial institution referred to in paragraph 1 where, as a consequence of the organizational and financial relationships between the institution and the institution or financial institution concerned, the institution is exposed to the majority of the risks and/or the benefits arising from the relevant activities of that institution or financial institution.

#### *Article 5*

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

- 1. Where an institution exercises a significant influence over one or more institutions or financial institutions but without holding a participation or other capital ties in those institutions, competent authorities may determine the full consolidation of the institutions or financial institutions concerned pursuant to point (a) of Article 18(6) of Regulation (EU) No 575/2013, on the basis of an assessment of the risks posed by those institutions or financial institutions to the institution exercising the significant influence, taking into account the extent and the effectiveness of any risk mitigants and the impact on the prudential requirements of that institution on a consolidated basis that could result from the application of full consolidation.
- 2. For the purposes of the assessment referred to in paragraph 1, the institution shall provide the competent authority, upon request, with all necessary information, in particular with regard to the elements referred to in points (a) to (i) of Article 4(3).
- 3. Competent authorities may, in particular, require full consolidation of the institutions or financial institutions referred to in paragraph 1 where, as a consequence of the organizational and financial relationships between the institution exercising the significant influence and the institutions or financial institutions concerned, the institution is exposed to the majority of the risks and/or the benefits arising from the relevant activities of those institutions or financial institutions.
- 4. For the purposes of the application of this Article, elements to be taken as indications of significant influence shall include the following:

- (a) the institution has appointed or has the right to appoint a member of the administrative, management or supervisory body of the institution or financial institution concerned;
  - (b) the institution is effectively involved in the decision-making process of the institution or financial institution concerned, including in decisions about dividends and other distributions;
  - (c) existence of material transactions with the institution or financial institution concerned;
  - (d) the institution has exchanged managerial personnel with the institution or financial institution concerned;
  - (e) the institution provides essential technical information or critical services to the institution or financial institution concerned;
  - (f) the institution has additional rights in the institution or financial institution concerned, pursuant to a contract, clauses of their memoranda or articles of association that could affect the management or the decision-making process of that institution or financial institution;
5. The existence of share warrants, share call options, debt instruments that are convertible into ordinary shares or other similar instruments that are currently exercisable or convertible and have the potential, if exercised or converted, to give the institution voting power or to reduce another party's voting power over the financial and operating policies of the institution or financial institution concerned shall also be considered in the assessment of significant influence.

#### *Article 6*

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

1. A competent authority shall determine the consolidation of two or more institutions or financial institutions that are placed under single management other than pursuant to a contract, clauses of their memoranda or articles of association for the purposes of point (b) of Article 18(6) of Regulation (EU) No 575/2013, where the following conditions are met:
  - (a) the competent authority has carried out an assessment aimed at verifying that the institutions' or financial institutions' financial and operating policies are effectively coordinated; and
  - (b) the institutions or financial institutions concerned are not related within the meaning of Article 22(1), (2) and (7)(b) of Directive 2013/34/EU.
2. For the purpose of point (a) of paragraph 1, competent authorities may, in particular, take into account the following elements as indications of the existence of the situation referred to in that point:

- (a) the institutions or financial institutions concerned are controlled directly or indirectly, by the same natural person or persons, or by the same entity or entities;
  - (b) a majority of the members of the institutions' or financial institutions' administrative, management or supervisory body consists of persons appointed by the same natural person or persons or by the same entity or entities, even if those members do not consist of the same persons.
- 3. In the cases referred to in this Article, competent authorities shall permit or require the use of the method of consolidation provided for in Article 22(8) and (9) of Directive 2013/34/EU.
- 4. Article 2(1) to (3) shall apply for the purposes of determining the entity responsible for ensuring compliance with the requirements referred to in Section 1 of Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013 on the basis of the consolidation situation of all institutions and financial institutions referred to in paragraph 1.

#### *Article 7*

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

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

## Article 8

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

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

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

2. For the purposes of applying paragraph 1, the Common Equity Tier 1 items and the Additional Tier 1 and Tier 2 capital instruments and the related share premium accounts referred to in the first subparagraph of paragraph 1 which are owned by the person or persons or the entity or entities which manage the undertakings on a unified basis pursuant to Article 18(3) of Regulation (EU) No 575/2013 or exercise single management over the undertakings pursuant to point (b) of Article 18(6) of that Regulation, shall be deemed to be available to cover the losses of all the undertakings included in the prudential scope of consolidation.
3. In cases where full consolidation is required pursuant to Articles 18(5), (6)(a) or (8) of Regulation (EU) No 575/2013, the institution shall determine the amount of Common Equity Tier 1 items and of the Additional Tier 1 and Tier 2 capital instruments and the related share premium accounts of the undertakings included in the prudential scope of consolidation which are owned by persons other than those undertakings, to be included in consolidated Common Equity Tier 1, Additional Tier 1 and Tier 2 capital in accordance with Articles 81 to 88 of Regulation (EU) No 575/2013. For these purposes, the undertakings for which full consolidation is required shall be considered to be subsidiaries.
4. In cases where proportional consolidation is required pursuant to Articles 18(4), (5) or (8) of Regulation (EU) No 575/2013, institutions shall determine the amount of Additional Tier 1 and Tier 2 capital instruments issued by the undertakings proportionally included in the prudential scope of consolidation which are owned by persons other than those undertakings as well as the related share premium accounts, to be included in consolidated Additional Tier 1 and Tier 2 capital in accordance with Articles 82, 83, and 85 to 88 of Regulation (EU) No 575/2013.
5. For the only purposes of the application of paragraph 4, the following shall apply:
  - (a) the undertakings for which proportional consolidation is required shall be considered to be subsidiaries;



- (b) references to the full inclusion in the consolidation pursuant to Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013 shall be construed as references to the proportional inclusion in the consolidation pursuant to Articles 18(4), (5) or (8) of that Regulation; and
- (c) the amounts referred to in Articles 82, 83 and 85 to 88 of Regulation (EU) No 575/2013 shall be determined taking into account the share of capital held by the institution in those undertakings.

*Article 9*  
*Entry into force*

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

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

Done at Brussels,

*For the Commission*  
*The President*