European Banking Authority

Single Rulebook Q&A

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STATUS	Final Q&A
LEGAL ACT	Regulation (EU) No 575/2013 as amended by Regulation (EU) 2019/876 – CRR2
TOPIC	Own funds
ARTICLE	85
PARAGRAPH	2
SUBPARAGRAPH	
ARTICLE/PARAGRAPH	Not applicable
COM DELEGATED OR IMPLEMENTING ACTS/RTS/ITS/GLS	Not applicable
TYPE OF SUBMITTER	Competent authority
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SUBJECT MATTER	Minority interest, AT1 and T2 instruments qualifying for inclusion in consolidated own funds
QUESTION	How should the calculation in Article 85(1) CRR be performed “on a sub-consolidated basis for each subsidiary” as required by Article 85(2) CRR, where no sub-consolidation or sub-consolidated own funds requirements apply to an institution?
BACKGROUND ON THE QUESTION	Consider a bank, Example Bank plc, 100% owned (in CET1 terms) by a holding company, Example Holding plc. Example Bank plc itself owns further subsidiary institutions. Example Bank plc itself is only subject to own funds requirements on an individual basis and on the basis of the consolidated situation of Example Holding plc; no sub-consolidated own funds requirements apply at the level of Example Bank plc (Articles 22 and 11(5) CRR do not apply). Example Bank plc has issued Additional Tier 1 instrument to external investors. Therefore, for the purposes of calculating the consolidated Tier 1 capital of Example Holding plc, the calculation as specified by Article 85 CRR applies.
EBA ANSWER	Article 85(2) CRR provides that the calculation for the inclusion of the qualifying Tier 1 instruments of the subsidiaries in the consolidated Tier 1 capital “shall be undertaken on a sub-consolidated basis for each subsidiary”. The same applies for the minority interests to be included in the consolidated CET1 capital (Article 84(2) CRR) and for the qualifying own funds to be included in the consolidated own funds (Article 87(2) CRR). An institution can choose not to undertake this calculation for a subsidiary. In this case, it follows from the second sentence of the same Articles that the minority interest/qualifying Tier 1 capital or other qualifying own funds of that subsidiary may not be included in the consolidated own funds. Furthermore, Articles 84(3), 85(3) as well as Article 87(3) CRR equally state that where the competent authority derogates from the application of prudential requirements on an individual basis, minority interests, Tier 1 instruments and own funds instruments within the subsidiaries to which the waiver is applied shall not be recognised in own funds at sub-consolidated or at consolidated level. Pursuant to Article 84(2) CRR (and - mutatis mutandis – according to Articles 85(2) and 87(2) CRR), the calculation shall take into account the specific own funds requirements of the subsidiary institution according to Article 92(1) CRR and, where applicable, the specific own funds requirements referred to in Article 104 of Directive

	2013/36/EU (CRD IV) as well as all the relevant capital buffers. Specifically dealing with the calculation of minority interests for subsidiaries on an intermediate level, Article 34a (3) (b) of the RTS on own funds determines that for the purpose of the sub-consolidation calculation, the amount of CET1 to be taken into account shall be the CET1 requirements of that subsidiary at the level of its consolidated situation. From this it can be assumed that the calculation is only possible where an own funds requirement has been set at the respective level. The purpose of the above mentioned provisions is to include in the calculation of the own funds the capital of the subsidiaries held by external investors (i.e. natural or legal persons not included in the perimeter of consolidation) only if the competent authority has required the subsidiary to comply with the prudential requirements on a sub-consolidated basis (Article 11(5) CRR) or if a mandatory sub-consolidation is required by the CRR (i.e. pursuant to Article 22 CRR)). **Disclaimer:** This question goes beyond matters of consistent and effective application of the regulatory framework. A Directorate General of the Commission (Directorate General for Financial Stability, Financial services and Capital Markets Union) has prepared the answer, albeit that only the Court of Justice of the European Union can provide definitive interpretations of EU legislation. This is an unofficial opinion of that Directorate General, which the European Banking Authority publishes on its behalf. The answers are not binding on the European Commission as an institution. You should be aware that the European Commission could adopt a position different from the one expressed in such Q&As, for instance in infringement proceedings or after a detailed examination of a specific case or on the basis of any new legal or factual elements that may have been brought to its attention.
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