
STATUTORY INSTRUMENTS

2013 No. 3115

The Capital Requirements Regulations 2013

PART 6

Consolidated supervision

Determination of the consolidating supervisor

20.—(1) The appropriate regulator must determine whether it is the EEA consolidating supervisor in respect of a group in accordance with Article 111 of the capital requirements directive.

(2) In particular cases, when determining which competent authority is the EEA consolidating supervisor in respect of a group, the appropriate regulator may, by agreement with the other relevant competent authorities, waive the criteria in paragraphs 3 and 4 of Article 111 of the capital requirements directive if their application would be inappropriate, taking into account the relative importance of the activities of the institutions which are members of the group in different countries.

(3) The appropriate regulator must notify EBA and the Commission if it concludes an agreement referred to in paragraph (2).

(4) If the appropriate regulator is the EEA consolidating supervisor, it shall be responsible for exercising supervision on a consolidated basis in accordance with Section 1 of Chapter 3 of Title 7 of the capital requirements directive and these Regulations.

Assessment of equivalence of consolidated supervision by supervisory authorities in non-EEA States

21.—(1) In this regulation, a “relevant institution” is an institution which satisfies the following conditions—

- (a) the institution is authorised by the PRA or FCA;
- (b) the parent undertaking of the institution is an institution, financial holding company or mixed financial holding company whose head office is not located in an EEA State;
- (c) the institution is not subject to supervision on a consolidated basis in accordance with Article 111 of the capital requirements directive;
- (d) the PRA or FCA would (but for paragraph (4)) be responsible for supervision of the institution on a consolidated basis; and
- (e) either—
 - (i) the parent undertaking of the institution, or any regulated entity established in the EEA which is a member of the same group as the institution, has requested the assessment referred to in paragraph (2) be carried out; or
 - (ii) the PRA or FCA has decided on its own initiative to carry out that assessment.

(2) The appropriate regulator must assess whether a relevant institution is subject to supervision on a consolidated basis by a supervisory authority of a country outside the EEA which is equivalent

to to the standard of supervision applicable to an institution under the capital requirements directive and Chapter 2 of Title 2 of Part 1 of the capital requirements regulation.

(3) For the purposes of carrying out the assessment referred to in paragraph (2), the appropriate authority must—

- (a) consult the other competent authorities which are responsible for the supervision of members of the group of which the relevant institution is a member; and
- (b) take into account any guidance issued by the European Banking Committee in accordance with Article 127(2) of the capital requirements directive.

(4) Where the appropriate regulator concludes that a relevant institution is not subject to equivalent supervision in accordance with paragraph (2), the appropriate regulator may apply—

- (a) the requirements of the capital requirements directive and capital requirements regulation to the institution, amended as necessary; or
- (b) other appropriate supervisory techniques, which must be designed to achieve the objectives of supervision on a consolidated basis in accordance with Chapter 3 of Title 7 of the capital requirements directive.

(5) The other appropriate supervisory techniques referred to in paragraph (4) may include a requirement on the institution to establish a financial holding company or mixed financial holding company with its head office in an EEA State, so that supervision on a consolidated basis may be applied in relation to the consolidated situation of that holding company.

(6) The appropriate regulator must—

- (a) consult the competent authorities referred to in paragraph (3)(a) before determining which supervisory techniques may be applied for the purposes of paragraph (4)(b); and
- (b) notify those competent authorities, the European Commission and EBA of the supervisory techniques it applies.

Co-ordination and co-operation arrangements

22.—(1) Where the appropriate regulator is the EEA consolidating supervisor, it must, wherever possible, have written co-ordination and co-operation agreements in place with other relevant competent authorities.

(2) The written co-ordination and co-operation agreements—

- (a) must, so far as necessary, facilitate and establish effective supervision; and
- (b) may specify additional tasks entrusted to the appropriate regulator and procedures for decision making and co-ordination.

(3) Where the appropriate regulator is not the EEA consolidating supervisor and has authorised a subsidiary in the United Kingdom of a parent institution in an EEA State other than the United Kingdom, it may, by agreement in accordance with Article 28 of the EBA Regulation, delegate its responsibility for supervising the subsidiary to the competent authority which authorised and supervises that parent institution.

(4) Where the appropriate regulator is the EEA consolidating supervisor or a relevant competent authority in relation to a parent institution established in the United Kingdom, it may, by agreement with a relevant competent authority in accordance with Article 28 of the EBA Regulation, accept responsibility for supervising a subsidiary of that parent institution which is established in another EEA State.

Co-ordination of supervisory activities by the EEA consolidating supervisor

23.—(1) This regulation applies where the appropriate regulator is the EEA consolidating supervisor.

(2) The appropriate authority must take such steps as it considers appropriate—

(a) in going-concern situations—

- (i) to co-ordinate the gathering and dissemination of relevant or essential information;
- (ii) to plan and co-ordinate supervisory activities in co-operation with other relevant competent authorities;

(b) in preparation for and during emergency situations, including adverse developments in institutions or in financial markets—

- (i) to co-ordinate the gathering and dissemination of relevant or essential information;
- (ii) to plan and co-ordinate supervisory activities, including exceptional measures, preparation of risk assessments, implementation of contingency plans and communication to the public, in co-operation with other relevant competent authorities and, where necessary, central banks.

(3) For the purposes of paragraph (2)—

(a) “essential information” has the same meaning as regulation 8(2); and

(b) “exceptional measures” includes the imposition of a specific own funds requirement under Article 104 of the capital requirements directive and the imposition of any limitation on the use of the advanced measurement approach for the calculation of own funds requirements under Article 312(2) of the capital requirements regulation.

(4) If a relevant competent authority does not co-operate with the appropriate regulator to the extent required in carrying out the tasks referred to in paragraph (2), the appropriate regulator may refer the matter to EBA (which may act in accordance with Article 19 of the EBA Regulation).

The Bank’s general duties

24. Where—

- (a) an entity belonging to a group has been authorised, or a significant branch is established, in the United Kingdom; and
- (b) an emergency situation arises, including a situation as defined in Article 18 of the EBA Regulation or a situation of adverse developments in financial markets, which potentially jeopardises the market liquidity and the stability of the financial system in the United Kingdom,

the Bank must notify, as soon as practicable, the national consolidating supervisor or, where appropriate, the EEA consolidating supervisor and EBA.

Exchange of information

25.—(1) This regulation applies where—

- (a) an institution has been authorised in the United Kingdom and its parent undertaking is situated in another EEA State; or
- (b) a parent undertaking is situated in the United Kingdom, whose subsidiaries include institutions which have been authorised in another EEA State.

(2) The appropriate regulator must disclose to a relevant competent authority and, where appropriate, the EEA consolidating supervisor, all relevant information which may allow or aid the exercise of supervision on a consolidated basis.

Obtaining information already disclosed

26. Where the appropriate regulator is the EEA consolidating supervisor and needs information which has already been given to a relevant competent authority, it must, wherever possible, obtain that information by requesting its disclosure from that relevant competent authority.

Verification of information by a competent authority in another EEA State

27.—(1) This regulation applies where the appropriate regulator wishes in a specific case to check information concerning any of the following entities which are established in another EEA State—

- (a) an institution;
- (b) a financial holding company;
- (c) a mixed financial holding company;
- (d) a financial institution;
- (e) an ancillary services undertaking,
- (f) a mixed-activity holding company;
- (g) a subsidiary of any of the entities mentioned in paragraphs (a) to (f) which is an insurance company or investment firm subject to authorisation;
- (h) a subsidiary of any of the entities mentioned in paragraphs (a) to (c) which is not included within the scope of supervision on a consolidated basis.

(2) The appropriate regulator may ask the competent authority in that other EEA State to check that information.

Requirement to establish list of holding companies

28.—(1) Where the appropriate authority is the EEA consolidating supervisor, it shall establish lists of the financial holding companies and mixed financial holding companies referred to in Article 11 of capital requirements regulation.

(2) The lists mentioned in paragraph (1) shall be communicated to the competent authorities in other EEA States, EBA and the European Commission.

Joint decisions on own funds: PRA or FCA is the EEA consolidating supervisor

29.—(1) This regulation applies where the appropriate regulator is the EEA consolidating supervisor of an institution (“the relevant institution”).

(2) The appropriate regulator must submit a report setting out its risk assessment of the group in accordance with Articles 73, 97 and 104(1)(a) of the capital requirements directive to the relevant competent authorities.

(3) The appropriate regulator must take all reasonable steps to reach a joint decision with the relevant competent authorities, within four months of submitting its report, on—

- (a) the application of Articles 73 and 97 of the capital requirements directive to determine the adequacy of the consolidated level of own funds held by the group with respect to its financial situation and risk profile; and
- (b) the required level of own funds for the application of Article 104(1)(a) to each member of the group and to the group as a whole.

(4) The appropriate regulator must consider, for the purposes of reaching a joint decision, the risk assessments prepared in relation to subsidiaries by the relevant competent authorities.

(5) The appropriate regulator must provide the relevant institution with a document setting out the fully reasoned joint decision.

(6) Where a joint decision cannot be reached, the appropriate regulator must, at the request of any of the relevant competent authorities, consult EBA, or may do so of its own initiative.

(7) If a joint decision has not been made within four months of the appropriate regulator submitting its report in accordance with paragraph (2), the appropriate regulator must—

- (a) after considering the risk assessments prepared in relation to subsidiaries by the relevant competent authorities and any advice given by EBA, make a decision on the matters referred to in paragraph (3);
- (b) where that decision differs significantly from any advice given by EBA, give reasons for the difference;
- (c) provide all relevant competent authorities and the relevant institution with a document containing its decision and the decisions of the relevant competent authorities on the levels of own funds required to be held by subsidiaries on an individual or, where appropriate, sub-consolidated basis;
- (d) recognise the decisions taken by the relevant competent authorities, mentioned in sub-paragraph (c), as determinative.

(8) If, by the end of the four month period referred to in paragraph (7), any of the relevant competent authorities has referred the matter to EBA in accordance with Article 19 of the EBA Regulation, the appropriate regulator must defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation on the appropriate regulator's decision on the matters referred to in paragraph (3).

(9) If EBA takes a decision in accordance with Article 19(3) of the EBA Regulation, the appropriate regulator must take its decision on the matters referred to in paragraph (3) in conformity with the decision of EBA.

(10) The appropriate regulator must update the joint decision reached in accordance with paragraph (3) or its own decision made under paragraph (7)(a) or (9)—

- (a) annually; or
- (b) in exceptional circumstances, on receipt of a fully reasoned written request by a relevant competent authority to update the decision on the application of Article 104(1)(a) of the capital requirements directive;

and where sub-paragraph (b) applies, the updated decision may be made after consultation with the competent authority making the request, without consulting the other relevant competent authorities.

Joint decisions on own funds: PRA or FCA is not the EEA consolidating supervisor

30.—(1) This regulation applies where an appropriate regulator—

- (a) is a relevant competent authority; and
- (b) receives a report containing the risk assessment of the group from the EEA consolidating supervisor.

(2) The appropriate regulator must submit to the EEA consolidating supervisor a report containing its risk assessment of each subsidiary of the group it has authorised.

(3) The appropriate regulator must take all reasonable steps to reach a joint decision with the EEA consolidating supervisor and any other relevant competent authorities on the matters referred to in regulation 29(3) within four months of the appropriate regulator receiving the report from the EEA consolidating supervisor.

(4) Where agreement on a joint decision cannot be reached, the appropriate regulator may request that the EEA consolidating supervisor consult EBA.

(5) If a joint decision has not been reached within four months of the appropriate regulator receiving the report from the EEA consolidating supervisor, the appropriate regulator must—

- (a) make a decision on the level of own funds which each subsidiary it has authorised should hold on an individual or, where appropriate, sub-consolidated, basis, in accordance with Articles 73, 97 and 104(1)(a) of the capital requirements directive, taking into account the views of the EEA consolidating supervisor and any advice given by EBA;
- (b) where the appropriate regulator's decision differs significantly from any advice given by EBA, give reasons for the difference;
- (c) provide the EEA consolidating supervisor with a document containing its decision; and
- (d) recognise the decisions taken by the EEA consolidating supervisor and any other relevant competent authorities on the levels of own funds required to be held by the group or its subsidiaries located outside the United Kingdom, as determinative.

(6) If, by the end of the four month period referred to in paragraph (5), any of the relevant competent authorities has referred the matter to EBA in accordance with Article 19 of the EBA Regulation, the appropriate regulator must defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation.

(7) If EBA takes a decision in accordance with Article 19(3) of the EBA Regulation, the appropriate regulator must take its decision on the matters referred to in paragraph (5)(a) in conformity with the decision of EBA.

(8) The appropriate regulator may, in exceptional circumstances, make a fully reasoned written request to the EEA consolidating supervisor to update the decision on the level of own funds required to be held by any subsidiary of the group located in the United Kingdom in accordance with Article 104(1)(a) of the capital requirements directive.

Joint decision on liquidity: PRA or FCA is the EEA consolidating supervisor

31.—(1) This regulation applies where the appropriate regulator is the EEA consolidating supervisor of an institution (“the relevant institution”).

(2) The appropriate regulator must submit a report containing its assessment of the liquidity risk profile of a group in accordance with Articles 86 and 105 of the capital requirements directive to the relevant competent authorities.

(3) The appropriate regulator must take all reasonable steps to reach a joint decision with the relevant competent authorities, within one month of submitting its report, on measures to address any significant matters and material findings relating to liquidity supervision in relation to the group including those relating to—

- (a) the adequacy of the organisation and the treatment of risks as required pursuant to Article 86 of the capital requirements directive; and
- (b) the need for institution-specific liquidity requirements in accordance with Article 105 of the capital requirements directive.

(4) The appropriate regulator must consider, for the purposes of reaching a joint decision, the risk assessments prepared in accordance with Articles 73 and 97 of the capital requirements directive in relation to subsidiaries by the relevant competent authorities.

(5) The appropriate regulator must provide the relevant institution with a document setting out the fully reasoned joint decision.

(6) Where a joint decision cannot be reached, the appropriate regulator must, at the request of any of the relevant competent authorities, consult EBA, or may do so of its own initiative.

(7) If a joint decision has not been made within one month of the appropriate regulator submitting its report in accordance with paragraph (2), the appropriate regulator must—

- (a) after considering the risk assessments prepared in relation to subsidiaries by the relevant competent authorities and any advice given by EBA, make a decision on the matters referred to in paragraph (3);
- (b) where that decision differs significantly from any advice given by EBA, give reasons for the difference;
- (c) provide all relevant competent authorities and the relevant institution with a document containing its decision and the decisions of the relevant competent authorities on the matters referred to in paragraph (3);
- (d) recognise the decisions taken by the relevant competent authorities, mentioned in sub-paragraph (c), as determinative.

(8) If, by the end of the one month period referred to in paragraph (7), any of the relevant competent authorities has referred the matter to EBA in accordance with Article 19 of the EBA Regulation, the appropriate regulator must defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation on the appropriate regulator's decision on the matters referred to in paragraph (3).

(9) If EBA takes a decision in accordance with Article 19(3) of the EBA Regulation, the appropriate regulator must take its decision on the matters referred to in paragraph (3) in conformity with the decision of EBA.

(10) The appropriate regulator must update the joint decision reached in accordance with paragraph (3) or its own decision made under paragraph (7)(a) or (9)—

- (a) annually; or
- (b) in exceptional circumstances, on receipt of a fully reasoned written request by a relevant competent authority to update the decision on the application of Article 105 of the capital requirements directive;

and where sub-paragraph (b) applies, the updated decision may be made after consultation with the competent authority making the request, without consulting the other relevant competent authorities.

Joint decision on liquidity: PRA or FCA is not the EEA consolidating supervisor

32.—(1) This regulation applies where an appropriate regulator—

- (a) is a relevant competent authority; and
- (b) receives a report containing the assessment of the liquidity risk profile of a group in accordance with Articles 86 and 105 of the capital requirements directive from the EEA consolidating supervisor.

(2) The appropriate regulator must submit to the EEA consolidating supervisor a report containing its assessment of the liquidity risk profile of each subsidiary of the group it has authorised.

(3) The appropriate regulator must take all reasonable steps to reach a joint decision with the EEA consolidating supervisor and any other relevant competent authorities on the matters referred to in regulation 31(3) within one month of the appropriate regulator receiving the report from the EEA consolidating supervisor.

(4) Where agreement on a joint decision cannot be reached, the appropriate regulator may request that the EEA consolidating supervisor consult EBA.

(5) If a joint decision has not been reached within one month of the appropriate regulator receiving the report from the EEA consolidating supervisor, the appropriate regulator must—

- (a) make a decision on the matters referred to in regulation 31(3), taking into account the views of the EEA consolidating supervisor and any advice given by EBA;
 - (b) where the appropriate regulator's decision differs significantly from any advice given by EBA, give reasons for the difference;
 - (c) provide the EEA consolidating supervisor with a document containing its decision; and
 - (d) recognise the decisions taken by the EEA consolidating supervisor and any other relevant competent authorities on the matters referred to in regulation 31(3) in relation to the banking or investment group or its subsidiaries outside the United Kingdom, as determinative.
- (6) If, by the end of the one month period referred to in paragraph (5), any of the relevant competent authorities has referred the matter to EBA in accordance with Article 19 of the EBA Regulation, the appropriate regulator must defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation.
- (7) If EBA takes a decision in accordance with Article 19(3) of the EBA Regulation, the appropriate regulator must take its decision on the matters referred to in paragraph (5)(a) in conformity with the decision of EBA.
- (8) The appropriate regulator may, in exceptional circumstances, make a fully reasoned written request to the EEA consolidating supervisor to update the decision on the liquidity requirements of any subsidiary of the group within the United Kingdom in accordance with Article 105 of the capital requirements directive.

Colleges of supervisors

- 33.—**(1) This regulation applies where the appropriate regulator is the EEA consolidating supervisor.
- (2) Where an institution belongs to a group whose members include at least one other institution which is established in another EEA State, the appropriate regulator must, acting on the basis of agreements entered into pursuant to regulation 22, establish a college of supervisors to—
- (a) facilitate its duties as an EEA consolidating supervisor; and
 - (b) ensure appropriate co-ordination and co-operation with competent authorities outside the EEA where appropriate.
- (3) The college of supervisors shall facilitate the carrying out of the following tasks by the EEA consolidating supervisor and the other relevant competent authorities—
- (a) exchanging relevant information;
 - (b) agreeing on the voluntary allocation of tasks and the voluntary delegation of responsibilities where appropriate;
 - (c) determining supervisory examination programmes based on a risk assessment of the relevant group in accordance with Article 97 of the capital requirements directive;
 - (d) increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements;
 - (e) where appropriate, applying the prudential requirements under the capital requirements directive on a consistent basis to all members of a group;
 - (f) planning and co-ordination of supervisory activities in preparation for and during emergency situations, including adverse developments in institutions or financial markets, taking into account the work of any other relevant bodies established for such purposes.
- (4) The following bodies may participate in the college of supervisors—
- (a) the relevant competent authorities;

- (b) the competent authorities of a host EEA State in which a significant branch is established;
 - (c) central banks;
 - (d) competent authorities situated outside the EEA, provided that, in the opinion of the appropriate regulator and all relevant competent authorities, they are subject to confidentiality requirements equivalent to the requirements of section 2 of Chapter 1 of the capital requirements directive and, where applicable, Articles 54 and 58 of Directive [2004/39/EC](#);
 - (e) competent authorities responsible for the supervision of other regulated entities in the group.
- (5) The appropriate regulator must co-operate closely with EBA and other competent authorities participating in the college of supervisors and permit EBA to contribute to promoting and monitoring the efficient, effective and consistent functioning of the college, in accordance with Article 116(1) of the capital requirements directive.
- (6) The appropriate regulator must—
- (a) inform members in advance about the organisation of and agenda for any meeting of the college of supervisors, including any activities to be considered at that meeting;
 - (b) decide which competent authorities may attend any meeting or participate in any activity;
 - (c) chair any meeting;
 - (d) inform members in a timely manner of the actions taken at any meeting or any activities carried out.
- (7) When making a decision under paragraph (6)(b), the appropriate regulator must take into account the relevance to each competent authority of the supervisory activity to be planned or co-ordinated, and in particular—
- (a) the potential impact on the stability of the financial system in the EEA State concerned; and
 - (b) the competent authority's obligations as the competent authority of the home EEA State under Article 51(2) of the capital requirements directive.
- (8) Subject to confidentiality requirements under section 2 of Chapter 1 of Title 7 of the capital requirements directive and, where applicable, Articles 54 and 58 of Directive [2004/39/EC](#), the appropriate regulator must—
- (a) inform EBA of the activities of the college of supervisors, including in emergency situations; and
 - (b) provide EBA with all information that is of particular relevance for the purposes of supervisory convergence.