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EUROPEAN CENTRAL BANK

BANKING SUPERVISION

The ECB's role in approving (mixed) financial holding companies

Article 21a of the Capital Requirements Directive (CRD V) introduces a new regulatory regime for the approval of (mixed) financial holding companies, which are referred to below as (M)FHCs.

The relevant legislation is:

- CRD V: Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU.
- Capital Requirements Regulation (CRR II): Regulation (EU) 2019/876 of 20 May 2019 amending Regulation (EU) No 575/2013.

Scope

1. What does the new supervisory regime mean and from when will it apply?

Article 21a of the CRD V introduces a new supervisory regime for certain parent (M)FHCs in supervised groups (see question 3). This regime includes an approval by the consolidating supervisor, who has direct supervisory powers, with the result that the parent (M)FHC has direct responsibility for consolidated requirements throughout the supervised group. Member States should have transposed the new regime into national law as of 29 December 2020 (see also questions 8 and 11).

2. What is the rationale behind the new supervisory regime?

When (M)FHCs are parent undertakings of a supervised group, prudential requirements must be applied throughout the supervised group based on the consolidated situation of these holding companies. Since the (credit) institution controlled by these holding companies is not always able to ensure compliance with the requirements on a consolidated basis throughout the supervised group, certain (M)FHCs must be brought under the direct scope of supervisory powers pursuant to the CRD V and CRR II to ensure compliance on a consolidated basis. The new regime does not impose new individual requirements for those (M)FHCs that fall under its scope, and capital requirements continue to apply at the consolidated level.

3. Which entities need to apply for an approval by the ECB?

Parent (M)FHCs in a Member State, EU parent (M)FHCs and other certain parent (M)FHCs which are or will be established in Member States participating in the Single Supervisory Mechanism ("SSM") ("participating Member States") and which are part of a significant supervised group are subject to an approval or exemption by the ECB (see question 15 for the exemption regime). Such an approval or

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exemption must be sought from the ECB whenever the ECB is the consolidating supervisor as determined by Article 111 of the CRD V.

More specifically, according to Article 21a(1) of the CRD V, the following (M)FHCs[1] must seek approval:

- parent (M)FHCs in a Member State;
- EU parent (M)FHCs;
- other (M)FHCs which are required to comply with the CRD V/CRR II on a sub-consolidated basis.

Process

4. Where does an (M)FHC apply for an approval or exemption?

(M)FHCs must provide the necessary information, as stipulated in Article 21a(2) of the CRD V and as outlined in national law, to the consolidating supervisor. When the competent authority in the Member State where the (M)FHC is established is different from the consolidating supervisor, the information must also be provided to that competent authority.

Generally, for significant supervised groups it is the ECB that will receive the information (when it is the consolidating supervisor or when the (M)FHC is a significant supervised entity). The national competent authorities (NCAs) will receive the information for less significant supervised groups.

5. Can (M)FHCs approach the ECB to discuss their application and the approval process?

Yes. The ECB welcomes preparatory discussions on questions about the new regime and encourages the early communication of plans to establish new (M)FHCs in significant supervised groups. For queries about the approval/exemption application of significant institutions, please contact your Joint Supervisory Team and/or AUT_HOLDCO@ecb.europa.eu.

6. What happens if an (M)FHC of a supervised group within the SSM is established in a Member State that is not participating in the SSM?

Whenever a significant group supervised by the ECB has one or more parent (M)FHCs that is located in a Member State not participating in the SSM and that requires an approval, a joint decision will be

[1] For the definitions, please refer to paragraphs 20, 21, 30, 31, 32, 33 and 49 of Article 4 of the CRR.

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taken by the ECB as consolidating supervisor and by the NCA of the Member State where the (M)FHC is established.

7. Can the ECB also be involved when it is not the consolidating supervisor?

Yes, the ECB will also be involved in a joint decision when the consolidating supervisor is a competent authority in a Member State that is not participating in the SSM and there is an (M)FHC that falls under the scope of Article 21a(1) of the CRD V, is established in a participating Member State and is a significant supervised entity.

8. By when does an (M)FHC need to apply?

Applications for the approval or exemption of (M)FHCs will follow different regimes and timelines in accordance with their date of establishment. A transitional period applies to (M)FHCs that already existed on 27 June 2019 – they must apply for approval by 28 June 2021.

(M)FHCs established after 27 June 2019 are subject to the normal approval regime. In principle, this means that they should have applied for approval or exemption by 29 December 2020, i.e. the date of transposition of the CRD V into national law and thus when the provisions of the CRD V became applicable. The actual date of national transposition and any national transitional regimes will be taken into account.

9. How should (M)FHCs established after 29 December 2020 apply?

New (M)FHCs established after the national transposition of Article 21a of the CRD V must obtain an approval or exemption before they come into existence in the supervised group's holding chain. If this new (M)FHC will become a qualifying shareholder of a credit institution, it must also request a qualifying holding (QH) approval.

10. How does the (M)FHC approval interact with the qualifying holding procedure required in accordance with Article 22 of the CRD V?

When the approval of an (M)FHC takes place concurrently with the assessment of an acquisition of a QH (as referred to in Article 22 of the CRD V), the competent authorities involved should coordinate with each other. The QH "assessment period", as referred to in the second sub-paragraph of Article 22(3) of the CRD V, will be suspended (for a period exceeding 20 working days) until the procedure as set out in Article 21a of the CRD V is completed. This means that the QH procedure cannot be approved until the (M)FHC procedure has been concluded. The approval of both the (M)FHC and the QH assessment should be based on the criteria applicable to the respective procedure. The requirement that the two procedures be coordinated should not be understood as a requirement that the two procedures have the same result.

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The application for the QH will first be submitted to the NCA of the target of the proposed acquisition, i.e. the NCA of the supervised credit institution in which a QH is acquired. The ECB takes the final decision on QH procedures. The application for the (M)FHC approval should be submitted to the consolidating supervisor directly (see question 4).

11. How are applications handled that are submitted before the CRD V is transposed into national law?

The national transposition of Article 21a of the CRD V should have taken place by 29 December 2020. Any applications submitted before the national applicable law is in force will be on hold until such law is in place. Applicants are nonetheless encouraged to contact the competent authority for preparatory discussions (see question 5).

12. How long does the approval process take?

The decision to grant the approval must be taken within six months of receipt of the application, regardless of its completeness.

If the consolidating supervisor intends to refuse the approval of an (M)FHC, it will notify the applicant of the decision and the reasons therefore within four months of receipt of the complete application. This means that when an application is considered incomplete upon submission the deadline for refusal will only be triggered as of the date of submission of the missing information required for the decision. Nevertheless, a decision must always be taken within six months of receipt of the application.

Approval requirements

13. What are the requirements for approving an (M)FHC?

The conditions which an (M)FHC must comply with in order to be approved relate to the internal distribution of tasks within the group, the structural organisation of the group and the suitability of the shareholders and board members of the (M)FHC.

More specifically, according to Article 21a(3) of the CRD V, the following conditions must be fulfilled:

(a) the internal arrangements and distribution of tasks within the group are adequate for the purpose of complying with the requirements imposed by the CRD V and CRR II on a consolidated or sub-consolidated basis and, in particular, are effective to:

    i. coordinate all the subsidiaries of the financial holding company or mixed financial holding company including, where necessary, through an adequate distribution of tasks among subsidiary institutions;

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ii. prevent or manage intragroup conflicts; and

iii. enforce the group-wide policies set by the parent financial holding company or parent mixed financial holding company throughout the group;

(b) the structural organisation of the group of which the financial holding company or mixed financial holding company is part does not obstruct or otherwise prevent the effective supervision of the subsidiary institutions or parent institutions as concerns the individual, consolidated and, where appropriate, sub-consolidated obligations to which they are subject. The assessment of that criterion shall take into account, in particular:

i. the position of the financial holding company or mixed financial holding company in a multi-layered group;

ii. the shareholding structure; and

iii. the role of the financial holding company or mixed financial holding company within the group;

(c) the criteria set out in Article 14 CRD V and the requirements laid down in Article 121 CRD V are complied with.

Approved (M)FHCs are required to continuously comply with these conditions. The ECB monitors compliance on an ongoing basis based on Article 21a(5) of the CRD V and the (M)FHC concerned should provide the ECB with the information required to monitor compliance.

14. What documents are applicants required to submit?

According to Article 21a(2) of the CRD V and subject to requirements in national law, applicants are required to submit the following information:

(a) the structural organisation of the group of which the financial holding company or the mixed financial holding company is part, with a clear indication of its subsidiaries and, where applicable, parent undertakings, and the location and type of activity undertaken by each of the entities within the group;

(b) information regarding the nomination of at least two persons effectively directing the financial holding company or mixed financial holding company and compliance with the requirements set out in Article 121 of the CRD V on qualification of directors;

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(c) information regarding compliance with the criteria set out in Article 14 of the CRD V concerning shareholders and members, where the financial holding company or mixed financial holding company has a credit institution as its subsidiary;

(d) the internal organisation and distribution of tasks within the group;

(e) any other information that may be necessary to carry out the assessments referred to in paragraphs 3 and 4 of Article 21a of the CRD V.

Any other information listed in the applicable national law should also be submitted.

For (M)FHCs that already exist within significant groups, the documentation requirements should be discussed with the supervisor.

Exemptions

15. Can an (M)FHC be exempted from the approval requirement?

Yes. Article 21a(4) of the CRD V provides five exemption conditions, all of which must be fulfilled for the (M)FHC to be exempted from the approval requirement. The exemption conditions are:

(a) the financial holding company's principal activity is to acquire holdings in subsidiaries or, in the case of a mixed financial holding company, its principal activity with respect to institutions or financial institutions is to acquire holdings in subsidiaries;

(b) the financial holding company or mixed financial holding company has not been designated as a resolution entity in any of the group's resolution groups in accordance with the resolution strategy determined by the relevant resolution authority pursuant to Directive 2014/59/EU;

(c) a subsidiary credit institution is designated as responsible to ensure the group's compliance with prudential requirements on a consolidated basis and is given all the necessary means and legal authority to discharge those obligations in an effective manner;

(d) the financial holding company or mixed financial holding company does not engage in taking management, operational or financial decisions affecting the group or its subsidiaries that are institutions or financial institutions;

(e) there is no impediment to the effective supervision of the group on a consolidated basis.

(M)FHCs exempted from approval must not be excluded from the perimeter of consolidation as laid down in the CRR II and CRD V.

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Exempted (M)FHCs are required to continuously comply with these conditions. The ECB monitors compliance on an ongoing basis based on Article 21a(5) of the CRD V and the (M)FHC concerned should provide the ECB with the information required to monitor compliance.

16. Does the granting of an exemption require an application to the ECB and a formal decision?

Unless national law states otherwise, the granting of an exemption requires an (M)FHC to submit an application in line with what is explained under question 4 above. In these cases, the ECB will conduct an assessment and take a decision (also through a joint decision (see questions 6 and 7) where needed) as to whether all of the conditions of Article 21a(4) of the CRD V have been met.

Decision

17. Will (M)FHCs receive a formal notification of approval or refusal?

Yes.

Non-compliance

18. What are the consequences of not applying for an approval by 29 December 2020 or 28 June 2021?

Failure to apply for the approval breaches Article 21a of the CRD V and can lead to the imposition of supervisory measures, as mentioned in Article 21a(6) of the CRD V, and to administrative penalties or other administrative measures foreseen in national law, as set out in Article 66 of the CRD V.

The supervisory measures available to the ECB may include:

a) suspending the exercise of voting rights attached to the shares of the subsidiary institutions held by the financial holding company or mixed financial holding company;

b) issuing injunctions or penalties against the financial holding company, the mixed financial holding company or the members of the management body and managers, subject to Articles 65 to 72 of the CRD V;

c) giving instructions or directions to the financial holding company or mixed financial holding company to transfer to its shareholders the participations in its subsidiary institutions;

d) designating on a temporary basis another financial holding company, mixed financial holding company or institution within the group as responsible for ensuring compliance with the requirements laid down in the CRD V and in the CRR II on a consolidated basis;

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e) restricting or prohibiting distributions or interest payments to shareholders;

f) requiring financial holding companies or mixed financial holding companies to divest from or reduce holdings in institutions or other financial sector entities;

g) requiring financial holding companies or mixed financial holding companies to submit a plan on return, without delay, to compliance.

19. What are the consequences of the ECB refusing an approval?

If an (M)FHC is not approved, it may be subject to supervisory measures. The ECB considers which measures provided under Article 21a(6) of the CRD V (and in national law, if any additional) are necessary on a case-by-case basis.

20. What happens if an already approved (M)FHC no longer meets the approval conditions?

(M)FHCs are required to continuously comply with the approval or exemption conditions. In accordance with Article 21a(5) of the CRD V, the ECB monitors compliance with the approval conditions on an ongoing basis. If the ECB determines that the approval conditions (1) have not been met or (2) have ceased to be met the (M)FHC will be subject to supervisory measures to (1) ensure or (2) restore the continuity and integrity of consolidated supervision and ensure compliance with the requirements laid down in the CRD V and CRR II on a consolidated basis.

21. What happens if the exemption conditions are not fulfilled or are no longer fulfilled?

If the ECB establishes that the conditions for exemption have not been met (when initially applying) or are no longer met (after having received the exemption), the (M)FHC must seek an approval pursuant to the criteria set out in Article 21a(3) of the CRD V. (M)FHCs are required to continuously comply with the exemption conditions. In accordance with Article 21a(5) of the CRD V, the ECB monitors compliance with the exemption conditions on an ongoing basis.

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