Official Journal
of the European Union

EN
L series

2024/1771

25.6.2024

COMMISSION DELEGATED REGULATION (EU) 2024/1771

of 13 March 2024

on supplementing Regulation (EU) 2019/2033 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the scope and methods for prudential consolidation of an investment firm group

(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 ([1]), 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 as referred to in Article 7 of Regulation (EU) 2019/2033, it is necessary to determine, on the basis of Directive 2013/34/EU of the European parliament and of the Council ([2]), the links on the basis of which ancillary services undertakings, financial institutions, investment firms, 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 ensure the effectivity and neutrality of the supervision on a consolidated basis, it is necessary to lay down criteria for competent authorities to determine where parent-subsidiary links exist for all investment firm groups across the Union.

(3) To take into account the links for consolidated supervision, ancillary services undertakings, financial institutions, investment firms, and tied agents should be included in the scope of prudential consolidation of the Union parent undertaking where control is established, dominant influence is exercised, or unified management or horizontal links are identified.

(4) To respect the principle of proportionality, and in particular to take into account the diversity in size of undertakings and their scale of operations, a Union parent undertaking should be allowed to exclude small undertakings from the scope of prudential consolidation.

(5) Pursuant to Article 22(2), point (b), of Directive 2013/34/EU, the scope of prudential consolidation of an investment firm group is to include cases where investment firm group entities are managed on a unified basis. To determine that such entities are managed on a unified basis, competent authorities should have concrete evidence that there is an effective coordination of the financial and operating policies of such entities.

([1]) OJ L 314, 5.12.2019, p. 1, ELI: http://data.europa.eu/eli/reg/2019/2033/oj.

([2]) 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, ELI: http://data.europa.eu/eli/dir/2013/34/oj).

(6) Pursuant to Article 22(7), points (a) and (b), of Directive 2013/34/EU, the scope of prudential consolidation of an investment firm group is to include cases of horizontal links where two entities are related, whereby one entity is not a subsidiary of the other and it thus is impossible to determine a Union parent undertaking. In such cases, the competent authority or, where applicable, the group supervisor as defined in Article 3(1), point (15), of Directive (EU) 2019/2034 of the European Parliament and of the Council ([3]) should determine the entity that should perform the consolidation and take on the role of Union parent undertaking.

(7) To ensure effective application of the prudential requirements at consolidated level, full consolidation of all entities included within the scope of prudential consolidation should be applied as a general rule. Where two undertakings are related as referred to in Article 22(7) of Directive 2013/34/EU, consolidation in accordance with Article 22(8) and (9) of Directive 2013/34/EU should be applied ('aggregation method').

(8) It is necessary to prevent the multiple use of elements eligible for own funds' calculation. Union parent undertakings, when calculating the consolidated permanent minimum capital requirement for an investment firm group, should therefore add the individual permanent minimum capital requirements for individual investment firms to the initial capital of those financial institutions that are subject to that type of capital requirement, in particular asset management companies, payment institutions, and electronic money institutions.

(9) Consolidated expenditure figures from the application of the relevant accounting framework do not exist in every case. To determine the consolidated fixed overheads requirement for the purpose of prudential consolidation, a Union parent undertaking should therefore calculate the amount of expenditure needed by the investment firm group by adding up the expenditure of the Union parent undertaking, and of the entities that are prudentially consolidated in the investment firm group and, where not already included in the costs of the investment firms, the costs of tied agents.

(10) Changes, including shifts in business models, or mergers and acquisitions, may result in significant variations in the projected fixed overhead. For the determination of own funds requirements on the basis of fixed overheads, it is therefore necessary to establish objective thresholds of projected fixed overheads.

(11) For the calculation of the consolidated K-factors, those activities and services that are included in Annex I to Directive 2014/65/EU of the European Parliament and of the Council ([4]), or associated activities and services, should also be taken into account, regardless of whether those activities and services are carried out or performed by the investment firms or by other entities of the investment firm group. It is therefore necessary to include in the calculation of the consolidated K-factors the activities and 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 Council ([5]) and 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 Council ([6]) carried out or performed by any entities of the investment firm group included in the consolidation.

([3]) Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64, ELI: http://data.europa.eu/eli/dir/2019/2034/oj).

([4]) 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, ELI: http://data.europa.eu/eli/dir/2014/65/oj).

([5]) 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, ELI: http://data.europa.eu/eli/dir/2009/65/oj).

([6]) 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, ELI: http://data.europa.eu/eli/dir/2011/61/oj).

(12) According to the definition of 'consolidated situation', laid down in Article 4(1), point (11), of Regulation (EU) 2019/2033, financial institutions are part of the scope of consolidation of an investment firm group. However, not all activities carried out by different financial institutions contribute to the calculation of consolidated K-factor requirements. It is therefore necessary to specify which activities of those financial institutions are relevant for specific K-factors.

(13) It is necessary to avoid the double-counting of elements eligible for own funds' calculation. Intragroup services and transactions should therefore be excluded for the calculation of certain consolidated K-factor requirements, and more in particular for the calculation of the K-factors 'assets safeguarded and administered' (K-ASA), 'client orders handled' (K-COH), and 'daily trading flow' (K-DTF).

(14) An investment firm can delegate assets' management to another entity that is part of the same investment firm group. To avoid double-counting, it is necessary to specify how those assets should be accounted for in the total amount of assets under management when calculating the consolidated K-factor 'assets under management' (K-AUM).

(15) Client money held by entities in the scope of consolidation may derive from the services and activities referred to in Annex I to Directive 2014/65/EU or from other services and activities which entities in the investment firm group lawfully perform. It is therefore necessary to ensure that the calculation of the K-factor 'client money held' (CMH) does not include client money derived from services and activities other than the ones listed in Annex I to that Directive. Against that background, 'client money held' (CMH) of the investment firm group should be the sum of the CMH of all group entities included in the consolidation other than payment institutions and asset management companies.

(16) To ensure proportionality and to avoid double counting, intra-group activities and services taken into account for the calculation of the K-AUM of an investment firm group should be excluded from the calculation of K-COH.

(17) Dealing on own account and providing underwriting or placement services presents the same risk when performed by entities of an investment firm group included in the consolidation, regardless of whether those entities are investment firms or financial institutions. For that reason, when calculating the consolidated K-factor 'net position risk' (K-NPR), Union parent undertakings should take all such activities and services into account, having also regard to Article 325b of Regulation (EU) No 575/2013 of the European Parliament and of the Council ([7]), in accordance with which the use of positions in one entity of the group to offset positions in another entity of that group is only allowed where the Union parent undertaking has obtained the permission of the relevant competent authority.

(18) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority.

(19) 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 of the European Parliament and of the Council ([8]),

([7]) 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, ELI: http://data.europa.eu/eli/reg/2013/575/oj).

([8]) 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, ELI: http://data.europa.eu/eli/reg/2010/1093/oj).

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

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

(1) 'Union parent undertaking' means a Union parent investment firm, a Union parent investment holding company, or a Union parent mixed financial holding company, that is responsible for the prudential consolidation of the investment firm group pursuant to Article 7(1) of Regulation (EU) 2019/2033;

(2) 'relevant entity' means an ancillary service undertaking, a financial institution, an investment firm, or a tied agent;

(3) 'capital ties' means the ownership, direct or indirect, of voting rights or capital of an undertaking, including a participation as defined in Article 2, point (2), of Directive 2013/34/EU.

Article 2

Scope of prudential consolidation

1. Competent authorities shall include in the scope of prudential consolidation of a Union parent undertaking the following relevant entities:

(a) a relevant entity in which the Union parent undertaking or another relevant entity that belongs to the same investment firm group has the majority of the shareholders' or members' voting rights;

(b) a relevant entity in which the Union parent undertaking or another relevant entity that belongs to the same investment firm group both:

  (i) has the right to appoint or remove a majority of the members of the relevant entity's administrative, management or supervisory body;

  (ii) is a shareholder in, or member thereof;

(c) a relevant entity over which the Union parent undertaking or another relevant entity that belongs to the same investment firm group has the right to exercise a dominant influence pursuant to:

  (i) a contract entered into with that relevant entity:

  (ii) a provision in the relevant entity's memorandum or articles of association, regardless of whether the Union parent undertaking or other relevant entity that belongs to the same investment firm group is a shareholder in, or a member of, that relevant entity;

(d) a relevant entity, in which the Union parent undertaking or another relevant entity that belongs to the same investment firm group is a shareholder, or is a member of that relevant entity, provided that any of the following conditions is fulfilled:

  (i) a majority of the members of the administrative, management, or supervisory body of that relevant 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, were appointed solely as a result of the exercise of the shareholders' or members' voting rights;

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

Meeting the condition set out in point (d)(i) shall not be required where an undertaking outside the investment firm group has the rights referred to in points (a), (b) or (c) with regard to that relevant entity.

2. In addition to the relevant entities referred to in paragraph 1, competent authorities shall determine whether the following relevant entities may be included in the scope of prudential consolidation of a Union parent undertaking:

(a) a relevant entity over which the Union parent undertaking or another relevant entity 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 relevant entities exist;

(b) a relevant entity with which the Union parent undertaking or another relevant entity of the investment firm group are managed on a unified basis as referred to in Article 4, regardless of whether capital ties between the relevant entities exist.

3. In addition to the relevant entities referred to in paragraphs 1 and 2, a competent authority shall determine whether the following relevant entities may be included in the scope of prudential consolidation:

(a) a relevant entity, other than a relevant entity as referred to in paragraph 1 or paragraph 2, with which another relevant entity of the investment firm group is managed on a unified basis in accordance with either of the following:

(i) a contract between those relevant entities;

(ii) the memorandum or articles of association of the relevant entities concerned;

(b) a relevant entity, other than a relevant entity as referred to in paragraph 1 or paragraph 2 or paragraph 3(a), of which the majority of the members of the administrative, management, or supervisory body of a relevant entity, is, on the basis of the its most recent financial statements, made up by the same persons that are also members of the administrative, management or supervisory body of the Union parent undertaking or of another relevant entity of the investment firm group.

Article 3

Exemptions from prudential consolidation

1. Competent authorities may exempt a Union parent undertaking from prudentially consolidating a relevant entity as 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 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 that relevant entity's assets under management and assets and off-balance sheet items.

2. 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).

3. Competent authorities may exempt a Union parent undertaking from prudentially consolidating a relevant entity as referred to in Article 2 where any of the following conditions is met:

(a) the relevant entity is situated in a third country where there are legal impediments to the transfer of the information needed for the prudential consolidation;

(b) the relevant entity is of negligible interest only with respect to the objectives of supervision of the investment firm group;

(c) the consolidation of the financial situation of the relevant entity would be inappropriate or misleading as far as the objectives of the supervision of the investment firm group are concerned.

Article 4

Management on a unified basis

1. For the purposes of Article 2(2), point (b), a competent authority shall determine that two or more relevant entities are managed on a unified basis where all of the following conditions are met:

(a) the financial and operating policies of the relevant entities concerned are effectively coordinated;

(b) the relevant entities are not related as referred to in Article 22(1), Article 22(2), point (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:

(a) whether the relevant entities concerned are controlled, directly or indirectly, by the same natural person or persons, or by the same undertaking or undertakings;

(b) whether the majority of the members of the administrative, management or supervisory body of, on the one hand, those relevant entities and, on the other hand, 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 where those members are not the same persons.

Article 5

Modality of application of Article 2(3)

1. Where consolidation is required pursuant to Article 2(3), the following entity shall be responsible for consolidating all relevant entities in the investment firm group and for applying Articles 8 to 11:

(a) where there is only one investment firm among the relevant entities referred to in Article 2(3), that investment firm;

(b) where there is more than one investment firm among the relevant entities referred to in Article 2(3), the investment firm with the largest amount of total assets.

For the purposes of the first subparagraph, point (b), the investment firm shall calculate the amount of total assets 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. By way of derogation from paragraph 1, the competent authorities or, where applicable, the group supervisor, may designate as responsible for the prudential consolidation of all relevant entities in the investment firm group and for applying Articles 8 to 11, an investment firm or a financial institution in the group if that relevant entity already has the duty to prepare the consolidated financial statements for the investment firm group.

Article 6

Method for prudential consolidation

1. The Union parent undertaking, or the relevant entity designated in accordance with Article 5, shall consolidate the entities referred to in Article 2(1) and (2) in accordance with Article 22(6) of Directive 2013/34 EU (full consolidation), and the entities referred to in Article 2(3) in accordance with Article 22(8) and (9) of that Directive (aggregation method).

2. By way of derogation from paragraph 1, the group supervisor may, regarding the relevant entities meeting the criteria in Article 2(3), allow the application to one or more of those relevant entities the consolidation method set out in Article 22(8) and (9) of Directive 2013/34/EU.

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. Institutions shall treat the minority interests and additional Tier 1 and Tier 2 instruments in accordance with Part Two, Title II, of Regulation (EU) No 575/2013 and Article 34a of Commission Delegated Regulation (EU) No 241/2014 ([9]).

2. Where the consolidation method is the one provided for in Article 6(2), the minority interests and additional Tier 1 and Tier 2 instruments that are issued by entities that are included in the scope of the prudential consolidation in accordance with Article 2 may be included in that consolidation provided that those minority interests and additional Tier 1 and Tier 2 instruments cover the losses of all the relevant entities 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 that are issued by entities that are included in the scope of consolidation in accordance with Article 2, and that are 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 entities included in the prudential scope of consolidation.

Article 8

Consolidation of own funds requirements

1. The own funds of a Union parent undertaking, or of a relevant entity designated as responsible for prudential consolidation in accordance with Article 5, shall, on a consolidated basis, amount to at least the highest of any of the following:

(a) the amount of the consolidated permanent minimum capital requirement calculated in accordance with Article 9;

(b) the amount of the fixed overheads requirement calculated in accordance with Article 10;

(c) the amount of the K-factor requirement calculated in accordance with Article 11.

2. By way of derogation from paragraph 1, the own funds of a Union parent undertaking, or of a relevant entity designated as responsible for prudential consolidation in accordance with Article 5, that meet, on a consolidated basis, the conditions for qualifying as a small and non-interconnected investment firm as referred to in Article 12(1) of Regulation (EU) 2019/2033, shall, on a consolidated basis, amount to at least the highest of the amounts referred to in paragraph 1, points (a) and (b).

3. The Union parent undertaking, or the relevant entity designated as responsible for prudential consolidation in accordance with Article 5, shall notify the group supervisor, as soon as it becomes aware thereof, that it no longer complies with or will no longer comply with paragraph 1 or 2, as applicable.

([9]) Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for own funds and eligible liabilities requirements for institutions (OJ L 74, 14.3.2014, p. 8, ELI: http://data.europa.eu/eli/reg_del/2014/241/oj).

Article 9

Consolidated permanent minimum capital requirement

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

(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 fall under the scope of the prudential consolidation;

(c) the initial capital of the asset management companies that fall under the scope of the prudential consolidation;

(d) the initial capital of payment institutions that fall under the scope of the prudential consolidation;

(e) the initial capital of electronic money institutions that fall under the scope of the prudential consolidation.

2. For the purposes of paragraph 1, the individual permanent minimum capital requirements of relevant entities established in third countries shall be the permanent minimum capital requirements that would apply if those relevant entities had been authorised in the Union.

Article 10

Consolidated fixed overheads requirement

1. A Union parent undertaking, or a relevant entity designated as responsible for prudential consolidation in accordance with Article 5, shall calculate its consolidated fixed overheads on the basis of its consolidated expenditure figures resulting from the applicable accounting framework on a consolidated basis.

2. Where the consolidated expenditure figures are not available under the applicable accounting framework, the consolidated fixed overheads shall amount to the sum of the following:

(a) the expenditures of the Union parent investment firm, or of the entity designated as responsible for prudential consolidation in accordance with Article 5, at the individual level;

(b) the expenditures of the relevant entities, at the individual level, that are consolidated in accordance with Article 6.

3. The Union parent undertaking, or the relevant entity designated as responsible for prudential consolidation in accordance with Article 5, shall include in the investment firm group's consolidated expenditure figures those expenditures of consolidated tied agents that have not yet been included in those consolidated expenditure figures.

4. A competent authority shall consider an increase or a decrease of the business activity of one or more relevant entities in the scope of consolidation in the investment firm group as a material change as referred to in Article 13(2) of Regulation (EU) 2019/2033 where such increase or decrease results in a change of 30 % or more in the projected consolidated fixed overheads of the current year.

Article 11

Consolidated K-factor requirement

1. A Union parent undertaking, or an entity designated as responsible for prudential consolidation in accordance with Article 5, shall calculate the consolidated K-factor requirement on the basis of its consolidated situation by applying the following steps in the following order:

(a) it shall calculate the different amounts referred to in paragraphs 2 and 3 by using the methodology laid down in those paragraphs;

(b) it shall multiply the amounts referred to in point (a) with the corresponding coefficients for each K-factor, as laid down in Table 1 in Article 15(2) of the Regulation (EU) 2019/2033;

(c) it shall add up the results of the calculation referred to in point (b).

2. A Union parent undertaking, or an entity designated as responsible for prudential consolidation in accordance with Article 5, shall calculate the following amounts of the investment firm group as follows:

(a) assets under management (AUM) of the investment firm 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 to be consolidated, including of third-country undertakings that would have been asset management companies had they been authorised in the Union, related to:

(1) the provision of the services referred to in Article 6(3), points (a) and (b)(i), of Directive 2009/65/EC;

(2) the provision of the services referred to in Article 6(4), points (a) and (b)(i), of Directive 2011/61/EU;

(b) client money held (CMH) of the investment firm group shall be the sum of the CMH of each relevant entity to be consolidated, including financial institutions other than payment institutions and asset management companies;

(c) assets safeguarded and administered (ASA) of the investment firm group shall be the sum of:

(i) the amount of ASA corresponding to the ASA of investment firms to be consolidated;

(ii) the amounts of those ASA of asset management companies to be consolidated related to:

(1) 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;

(2) 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;

(d) client orders handled (COH) of the investment firm group shall be the sum of the COH of each relevant entity to be consolidated, including the provision of the service referred to in Article 6(4), point (b)(iii), of Directive 2011/61/EU, but excluding intragroup transactions;

(e) net position risk (NPR) of the investment firm group as calculated in accordance with Article 22 of Regulation (EU) 2019/2033, including the net position risk of investment firms and financial institutions dealing on own account, providing underwriting of financial instruments, or placing financial instruments on a firm commitment basis, shall be calculated on a consolidated basis;

(f) clearing margin given (CMG) of the investment firm group shall be the sum of the CMG of each individual relevant entity to be consolidated that is allowed to use K-CMG;

(g) trading counterparty default (TCD) of the investment firm group as calculated in accordance with Article 26 of Regulation (EU) 2019/2033, including the trading counterparty default of investment firms and financial institutions dealing on own account, providing underwriting of financial instruments, or placing financial instruments on a firm commitment basis, shall be calculated on a consolidated basis;

(h) daily trading flow (DTF) of the investment firm group shall be the sum of the DTF of each investment firm and each financial institution that executes transactions in its own name, either for itself or on behalf of a client, that provides underwriting of financial instruments, or that places financial instruments on a firm commitment basis after excluding intragroup transactions;

(i) the concentration risk (CON) of the investment firm group shall be the exposure value of the investment firm group calculated in accordance with Article 36 of Regulation 2019/2033, whereby the limit of the investment firm group with regard to CON and the exposure value excess of the investment firm group shall be obtained by using the methods set out in Article 37(1) and (2) of that Regulation, respectively.

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

Where delegation occurs between two relevant entities in the investment firm group, the rules with respect to the calculation of the AUM laid down in Article 17(2) of Regulation (EU) 2019/2033 shall apply.

For the purposes of point (c), ASA shall exclude the individual amount of ASA of the relevant entities providing intragroup services to the consolidated financial institutions, as well as the amount of ASA of asset management companies related to the provision of asset safekeeping and administration in relation to the amount of private equity shares of alternative investment funds (AIFs).

For the purposes of point (d), where a group includes an investment firm which calculates K-AUM and there is another investment firm in the group which handles orders for the former investment firm in the form of reception, transmission, and execution of orders, the Union parent undertaking or the entity designated in accordance with Article 5 shall not calculate K-COH corresponding to those orders passed by the former investment firm and handled by the latter investment firm.

3. A Union parent undertaking or an entity designated as responsible for prudential consolidation in accordance with Article 5 shall calculate the investment firm group consolidated K-factor requirements, including the amounts corresponding to activities of tied agents, where, and to the extent that, those activities are not already included in the investment firm group consolidated K-factor requirements.

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, 13 March 2024.

For the Commission
The President
Ursula VON DER LEYEN