Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

Implementation of Competent Authority Discretions in the European Union (Investment Firms) Regulations 2021 and Regulation (EU) No 2019/2033

January 2023

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Version History

Version	Date	Amendments
0.1	29/10/2021	Initial version
0.2	31/01/2023	Updated to take account of: • Publication of updated Implementation Notice for Credit Institutions; • Finalisation of transposition of EU Directive 2019/2034; • The publication of Commission Delegated Regulations and EBA Guidelines under the EBA Roadmap on Investment Firms; • Notification that Central Bank permission is required before capital contributions may be recognised as CET1 capital.

1. Overview

1. This Implementation Notice sets out the Central Bank of Ireland's (Central Bank's) requirements and guidance in relation to the implementation of certain competent authority discretions arising under:
   - S.I. No. 355 of 2021, European Union (Investment Firms) Regulations 2021 (the IFD Regulations) transposing the majority of Directive (EU) 2019/2034 on the prudential supervision of investment firms (the IFD)[1] into Irish law[2];
   - Regulation (EU) 2019/2033 on the prudential requirements of investment firms (the IFR)[3] and S.I. No 356 of 2021, European Union (Investment Firms) (No. 2) Regulations 2021 (the IFR Regulations).

   For the avoidance of doubt, the Central Bank considers a discretion broadly to refer to a situation in which competent authorities are given a choice whether to apply or not to apply a given provision in EU legislation.

   This Implementation Notice does **not** address Member State discretions save those whose exercise has been delegated to the Central Bank by the IFD Regulations.

2. This Implementation Notice may be periodically updated or amended by the Central Bank.

3. References to Irish and EU legislation in this Implementation Notice should be read as a citation of, or reference to, the legislation as amended from time-to-time (including as amended by way of extension, application, adaptation, replacement or other modification of the legislation). References to draft EU legislation should be read as a citation of, or reference to, the legislation as ultimately adopted once the legislative process is complete. References to Central Bank, European Banking Authority (EBA) and European Securities and Markets Authority (ESMA) guidelines in this Implementation Notice should, if they have since been amended or replaced

[1] 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.

[2] S.I. No 302 of 2022, S.I. No. 303 of 2022 and S.I. No. 304 of 2022 complete the transposition of the IFD into Irish law.

[3] 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.

since the issuance of this Implementation Notice, be construed as references to the relevant amended or replacing guidelines.

4. This Implementation Notice is not an exhaustive account of the IFD Regulations, the IFR Regulations, the IFD or the IFR and should not be interpreted as such. For further information, and avoidance of doubt, stakeholders should consult the applicable legal texts and/or relevant European Commission or EBA websites directly.

Legal Basis for this Notice

5. The IFD and IFR were published in the Official Journal of the European Union on 5 December 2019 and entered into force on 25 December 2019. The IFD and the IFR are generally applicable from 26 June 2021[4].

6. The IFD, as an EU Directive, was transposed into Irish law by the IFD Regulations[5]. The IFR, as an EU Regulation, became directly applicable from 26 June 2021 and did not necessitate transposition.

7. Under Regulation 5(1) of the IFD Regulations the Central Bank is designated as the national competent authority (NCA) that carries out the functions and duties of the competent authority in IFD and IFR.

8. The Central Bank's Consultation Paper on Competent Authority Discretions in the IFD and the IFR (CP135) signalled the Central Bank's proposed approach and perspectives in relation to provisions contained within the IFD Regulations and the IFR where the competent authority can or must exercise its discretion.

9. As set out in the Feedback Statement to CP 135 the Central Bank has taken note of key points of concern identified in responses to this consultation and has provided further guidance on its proposed approach where necessary in the drafting of this Implementation Notice.

[4] Certain measures are applicable pre-26 June 2021:
- Point 6 of Article 62 of the IFD as regards Article 8a(3) of the CRDIV is applicable by 27 December 2020;
- Point (5) of Article 64 of the IFD applies from 26 March 2020;
- Points (2) and (3) of Article 63 of the IFR apply from 26 March 2020; and
- Points (30), (32) and (33) of Article 62 of the IFR apply from 25 December 2019.

[5] The IFD Regulations transpose the majority of the IFD into Irish law. S.I. No 302 of 2022, S.I. No. 303 of 2022 and S.I. No. 304 of 2022 complete the transposition.

Scope of the Implementation Notice

10. MiFID investment firms are authorised by the Central Bank under the Markets in Financial Instruments Directive (MiFID II)[6] as transposed into Irish law by the European Union (Markets in Financial Instruments) Regulations (as amended) (S.I. No 375 of 2017).

11. The IFD/IFR regime which is applicable from 26 June 2021 sets out a new bespoke prudential regime for MiFID investment firms with the exception of those MiFID investment firms referred to in Article 1(2) and (5) of the IFR and those MIFID investment firms required to seek authorisation as credit institutions under Regulation 31B of S.I No. 302 of 2022. These prudential rules aim to ensure that MiFID investment firms are managed in an orderly way and in the best interests of their clients and have sufficient resources to remain financially viable and not cause undue economic harm to their customers.

12. This Implementation Notice applies to all MiFID investment firms with the exception of the following firms which remain in scope of the Central Bank's Implementation Notice for Competent Authority discretions in the Capital Requirements Regulation and Capital Requirements Directive (CRR/CRD Implementation Notice)[7] and any subsequent revision thereof:

- Those MiFID investment firms referred to in Article 1(2)(a) and (b) of the IFR that are subject to the prudential regime under the CRR;
- MiFID investment firms referred to under Article 1(2)(c) of the IFR following the exercise of the competent authority discretion in Regulation 4 of the IFD Regulations;
- MiFID investment firms referred to in Article 1(5) of the IFR; or
- MiFID investment firms that meet the threshold set out in Regulation 31R(1) of S.I. No. 303 of 2022 that have submitted/are preparing to submit an application for authorisation as a credit institution

[6] Directive 2014/65/EU on markets in financial instruments

[7] Implementation of competent authority discretions and options in CRD IV and CRR

Note: All in-scope MiFID investment firms remain subject to the threshold reporting requirements under Article 55 of the IFR.

13. For the avoidance of doubt, MiFID investment firms subject to the IFD/IFR prudential regime (those firms not referred to in Article 1(2) or 1(5) of the IFR or in Regulation 31B of S.I. No. 302 of 2022) and in scope of this Implementation Notice are no longer in scope of the CRR/CRD Implementation Notice or any subsequent revision thereof (with the exception of specific instances cross referenced in this notice).

14. MiFID Investment firms that are subject to the IFD/IFR are classified as:
    - Small and non-interconnected MiFID investment firms (**Class 3 firms)** that do not hold any client assets and do not meet specific quantitative thresholds on an individual or group basis that are required to meet a reduced prudential regime[8]. These firms will be required to hold minimum own funds based on the higher of their Permanent Minimum Capital Requirement (PMR)[9] or their Fixed Overhead Requirement (FOR); or
    - All other MiFID investment firms (**Class 2 firms**) that hold minimum own funds based of the higher of their PMR; FOR; or "K-factor" own funds requirement.

[8] Class 3 firms must meet all of the conditions set out in Article 12 (1) & 2 of the IFR.

[9] Under the IFD/IFR the PMR is set equal to the Initial Capital Requirement (ICR), effectively setting the ICR as the minimum capital required.

The Central Bank's General Approach

15. In considering its position on the IFD and IFR discretions, the Central Bank has been guided by the following general principles:
    - To adopt a prudent approach;
    - To choose the more risk sensitive option, where one is identified; and
    - To be consistent and transparent in the intended approach, and the reasoning behind it.

16. Where relevant the onus is on an investment firm to apply for a particular discretion in a timely manner. Each investment firm should also reapply for the continued application of discretions on a case-by-case basis where the conditions relevant to their exercise have changed. This is without prejudice to the Central Bank's ability to exercise certain discretions on its own initiative at any time.

17. In determining its proposed approach towards the exercise of competent authority discretions arising under the IFD Regulations and IFR, the Central Bank had due regard to all of its statutory powers and responsibilities[10]; including its objective to prevent potential serious damage to the financial system in the State, to support the stability of that system and to protect the users of financial services[11].

18. IFR references several supervisory discretions in CRR related to own funds that apply to MiFID investment firms. For completeness, these are included in Appendix II along with IFR discretions.

EU and Regulatory Framework

19. Many of the discretions in the IFD Regulations and IFR are supplemented by additional provisions or standards. These include delegated regulations adopted by the European Commission most of which are based on technical standards (ITS/RTS) developed by the European Supervisory Authorities (ESAs), primarily the EBA, and in some cases in conjunction with ESMA. These measures are directly legally binding on all relevant entities.

[10] See, e.g., *Central Bank Acts 1942-2013*; *Central Bank (Supervision and Enforcement) Act 2013* (No 26 of 2013).

[11] *Central Bank Reform Act 2010* (No 23 of 2010).

20. The EBA also issues guidelines, recommendations and opinions, some of which relate to discretions, and maintains a Single Rulebook Q&A tool[12] to facilitate the consistent application of IFD and IFR across the EU. All relevant entities should comply with such guidelines, recommendations, opinions and Q&As as applicable, unless the Central Bank formally advises otherwise.

21. Under Regulation 6(2)(c) of the IFD Regulations the Central Bank shall make every effort to ensure compliance with the guidelines and recommendations issued by the EBA pursuant to Article 16 of Regulation (EU) No 1093/2010 and to respond to the warnings and recommendations issued by the European Systemic Risk Board pursuant to Article 16 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council.

22. For further information, and avoidance of doubt, MiFID investment firms are encouraged to consult the IFD Regulations, the IFR Regulations, IFD, IFR and CRR texts directly, as well as relevant accompanying guidance and/or publications issued by the EBA, ESMA and the European Commission.

23. The exercise of discretions detailed in this Implementation Notice is without prejudice to the transitional provisions set out in Article 57 of the IFR whereby MiFID investment firms may, at their own discretion, apply lower own funds for a period of five years from 26 June 2021 to 25 June 2026.

[12] EBA, Single Rulebook and Q&A https://eba.europa.eu/single-rule-book-qa

Structure of this Notice

24. Key discretions discussed in this paper relate to the prudential regime applicable to larger MiFID investment firms to ensure such firms are subject to appropriate prudential requirements, to the application of the new liquidity risk requirements and to requirements relating to the assessment of internal capital of smaller MiFID investment firms. Discretions specifically related to the practical implementation of the new prudential regime for MiFID investment firms are also discussed.

- **Section 2** details the Central Bank's policy in respect of the discretion **to apply the CRDIV/CRR regime to MiFID investment firms** in certain circumstances.
- **Section 3** details the Central Bank's policy in respect of the discretion to require **Class 3 MiFID investment** firms to perform an **assessment of internal capital and liquid assets**.
- **Section 4** details the Central Bank's policy in relation to specific **liquidity** discretions.
- **Section 5** details the Central Bank's policy in relation to discretions to make **adjustments to K-Factors** under certain circumstances.
- **Section 6** details the Central Bank's policy in relation to specific **variable remuneration** discretions.
- **Appendix I** lists competent authority discretions in **the IFD Regulations**.
- **Appendix II** lists competent authority discretions in **IFR and, by reference, CRR**.

2. Application of CRDIV/CRR to MiFID Investment Firms

MiFID Investment Firms with consolidated assets between EUR 5 and EUR 15 billion

25. Under Regulation 4(1) (b) (i) and (ii) of the IFD Regulations the Central Bank may decide to apply the requirements of the CRR to MiFID investment firms dealing on own account or underwriting on a firm commitment basis where the total value of the consolidated assets of the investment firm is equal to or exceeds EUR 5 billion calculated as an average over the previous 12 months and:
    - the MIFID investment firm's activities are of such a scale that the failure or the distress of the MiFID investment firm could lead to systemic risk; or
    - the MIFID investment firm is a clearing member as defined in Article 4(1)(3) of the IFR that offers its clearing services to other financial sector entities which are not clearing members themselves.

26. It is the Central Bank's view that where a MIFID investment firm meets the criteria set out in Regulation 4(1) (b) (i) and/or (ii) of the IFD Regulations (as specified by the criteria set out in Commission Delegated Regulation (EU) 2021/2153 of 6 August 2021[13]) the MiFID investment firm carries out activities on such a scale that the failure or the distress of the MiFID investment firm could have a detrimental impact on financial stability which, given its level of interconnectedness with the overall financial system, gives rise to systemic risk. Therefore, the Central Bank will exercise this discretion on a case-by-case basis taking into account the criteria set out in Regulation 4(1) (b) (i) and/or (ii) of the IFD Regulations and the thresholds set out in Commission Delegated Regulation (EU) 2021/2153.

27. Additionally, under Regulation 4(1)(b)(iii) of the IFD Regulations the Central Bank may apply the CRR regime to a MiFID investment firm with consolidated assets

[13] Commission Delegated Regulation (EU) 2021/2153 of 6 August 2021 sets out that the activities of a MiFID investment firm are considered to be on such a scale that the failure or distress of the MiFID investment firm could lead to systemic risk where the total notional value of non-centrally cleared OTC derivatives exceeds EUR 50 billion; the total value of financial instruments underwriting and/or placing of financial instruments on a firm-commitment basis exceeds EUR 5 billion; the total value of granted credits or loans to investors to allow them to carry out transactions exceeds EUR 5 billion and the total value of debt securities outstanding exceeds EUR 5 billion.

between EUR 5 and EUR 15 billion where it considers it to be justified in light of the size, nature, scale and complexity of the MiFID investment firm's activities taking into account the principle of proportionality and (i) the importance of the MiFID investment firm for the economy of the Union or the State and/or (ii) the significance of the MiFID investment firm's cross border activity and/or (iii) the interconnectedness of the MiFID investment firm with the wider financial system.

28. The Central Bank will exercise this competent authority discretion to apply the CRR to MiFID investment firms on a case-by-case basis should it consider this justified in light of the size, nature, scale and complexity of the activities of the MiFID investment firm concerned.

29. The Central Bank recognises that MiFID investment firms impacted by the exercise of this discretion will require time to prepare for the application of the CRDIV/CRR. Therefore, where possible and subject to the MiFID investment firm engaging with the Central Bank as set out in paragraph 30 below, the Central Bank will take into account MiFID investment firms' need for adequate time to prepare for the application of the CRDIV/CRR and will signal its intention to exercise this discretion in advance of the effective date of that new prudential regime.

30. The Central Bank expects that MiFID investment firms should give due regard to Commission Delegated Regulation (EU) 2021/2153 on the criteria for subjecting certain MiFID investment firms to the CRDIV/CRR developed by the EBA under Article 5(6) of the IFD to identify whether they may be subject to this discretion and to begin necessary preparations to ensure they are in a position to comply if/when the Central Bank exercises this discretion.

31. Additionally the Central Bank expects MiFID investment firms to engage with the Central Bank in a timely manner where there is a planned change in a MiFID investment firm's business model/level of activities that may lead the MiFID investment firm to meet the criteria set out in Regulation 4(1)(b) of the IFD Regulations for a sustained period of time and which may give rise to a decision by the Central Bank to exercise this discretion.

MiFID Investment firms included in consolidated supervision under CRDIV

32. Under Article 1(5) of the IFR, competent authorities may allow a MIFID investment firm dealing on own account or underwriting on a firm commitment basis that would otherwise be subject to the IFD/IFR on an individual basis and that is included in the consolidated supervision of a credit institution, a financial holding company or a mixed financial holding company under CRR to apply the prudential requirements of CRR. This is provided it has (i) notified both the supervising NCA and the consolidating supervisor as required and (ii) the NCA is satisfied that the application of the CRDIV/CRR prudential requirements does not result in a reduction of the own funds of the MIFID investment firm or is not undertaken for regulatory arbitrage purposes.

33. The Central Bank will exercise this discretion on a case-by-case basis where the appropriate notification is received by the Central Bank and the Central Bank is satisfied, based on its assessment of the information received from the MIFID investment firm, that the application of CRDIV/CRR to the MiFID investment firm on an individual basis will not result in a reduction in the individual own funds requirement for the MiFID investment firm, that the risks associated with the particular business model of the MIFID investment firm are adequately addressed by the CRDIV/CRR regime and that the application of the CRDIV/CRR regime is not undertaken for the purpose of regulatory arbitrage.

3. Assessment of Internal Capital and Liquid Assets

34. Under the IFD/IFR regime Class 2 MiFID investment firms must have processes in place to assess the amount and type of own funds and liquid assets they should hold to cover the type and amount of risk they might pose to others or which they may face themselves. This is known as the internal capital adequacy assessment process and internal risk-assessment process and requires a MIFD investment firm to identify the nature and level of risks which they may pose to others and to which they themselves are or might be exposed.

Requirement for Class 3 firms to perform an assessment of internal capital and liquid assets

35. Under Regulation 21(3) of the IFD Regulations the Central Bank can request Class 3 MiFID investment firms to assess and maintain internal capital and liquid assets which are adequate in quantity, quality and distribution to cover the nature and level of risks which they may pose to others and to which the MiFID investment firms themselves are, or might be, exposed on an ongoing basis.

36. The Central Bank considers it good practice to require all MiFID investment firms to review their own risks and ensure they have adequate capital and liquidity regardless of their size. MiFID investment firms that pose less risk and/or have very simple business models may establish a simpler, more appropriate internal capital and liquid assets assessment process. However, given the diverse scale and range of activities undertaken by MiFID investment firms it is important that all MiFID investment firms should undertake a regular exercise to assess and maintain the adequacy of the quantity, quality and distribution of internal capital held proportionate to the nature, scale and complexity of the individual MiFID investment firm.

37. Therefore, the Central Bank has decided to exercise this discretion and require Class 3 MiFID investment firms to perform an assessment of their internal capital and liquid assets to ensure they have adequate capital to cover the nature and level of risks they may post to others or to which they may be exposed.

4. Liquidity Requirements

38. The IFD/IFR regime introduces a minimum liquidity requirement for MiFID investment firms whereby firms are required to hold a minimum of one third of their fixed overhead requirement (FOR) in liquid assets at all times. The aim of the liquidity requirement is to ensure that MiFID investment firms can function in an orderly manner over time, without the need to set aside liquidity specifically for times of stress.

Exemption from Individual Liquidity Requirements when subject to Consolidated Supervision

39. Under Article 6(3) of the IFR competent authorities can exempt MiFID investment firms from the application of the liquidity requirements on an individual basis where they are part of a banking or investment firm group subject to consolidated supervision and:
    i. the parent monitors the liquidity position of the group on a consolidated basis;
    ii. the parent and the MiFID investment firm have entered into contracts that, to the satisfaction of the competent authority, allow for free movement of funds;
    iii. there is no current or foreseen practical impediment to the fulfilment of such contracts; and
    iv. the consolidated supervisor agrees.

    The Central Bank will exercise this discretion on a case-by-case basis where it is satisfied, based on its assessment of information received from the MiFID investment firm, that all conditions outlined under Article 6(3) of the IFR are met.

Liquidity Requirements for Class 3 firms

40. Under Article 43(1) of the IFR, competent authorities may exempt Class 3 MiFID investment firms from the requirement to hold at least one third of their FOR in liquid assets.

41. The Central Bank believes it is important for all MiFID investment firms to hold a minimum amount of liquid assets to support their resilience. Taking into account that the IFR introduces additional flexibility regarding what can be considered a liquid asset for Class 3 MiFID investment firms[14] the Central Bank does not consider the liquidity requirements set out in Article 43 of the IFR overly burdensome for MiFID investment firms. Therefore, in general the Central Bank will not exercise this discretion, but may do so on a case-by-case basis in exceptional circumstances taking into account the EBA guidelines issued specifying the criteria which competent authorities should consider when exempting Class 3 MiFID investment firms from the liquidity requirement[15].

Exemption from Consolidated Liquidity Requirements

42. Under Article 7(4) of the IFR, competent authorities can exempt a Union parent investment firm, a Union parent investment holding company or a Union parent mixed financial holding company from complying with the liquidity requirements on the basis of their consolidation situation taking into account the nature, scale and complexity of the investment firm group.

43. The Central Bank will exercise this discretion on a case-by-case basis taking into account the nature, scale and complexity of the investment firm group provided that all MiFID investment firms within the group apply the liquidity requirements on an individual basis.

[14] Class 3 firms may include receivables from trade debtors and fees or commissions receivable in the next 30 days in their liquid assets when they account for up to a third of the minimum liquidity requirement, are not used towards any other liquidity requirement required by the competent authority and a 50% haircut is applied.

[15] https://www.eba.europa.eu/eba-publishes-its-final-guidelines-criteria-exemption-investment-firms-liquidity-requirements

5. K-Factor Adjustment

44. Under the IFD/IFR Class 2 firms are required to calculate their own funds by reference to a set of K-factors which are proxies designed to capture MiFID investment firms risk to Clients[16], risk to Market[17] and risk to Firm[18]. The calculation is based on the rolling average of a volume of activity over the period specified.

Adjustment of K-Factors following a material change in business activity

45. Under Article 15(4) of the IFR, where the competent authority considers that there has been a material change in the business activities of a MIFID investment firm that impacts the amount of a relevant K-factor, they may adjust the K-factor by a corresponding amount.

46. The Central Bank will exercise this discretion on a case by case basis under certain circumstances such as, but not limited to, where a MiFID investment firm is seeking authorisation for a new investment activity or where a MiFID investment firm is significantly expanding its activities and the K-factor is no longer reflective of the proposed level of activity.

47. While the notion of "material change" is not defined in the IFR the Central Bank may, inter alia, have due regard to the specification of the notion of a material change in the RTS for Own Funds Requirements for Investment Firms based on Fixed Overheads[19] developed under Article 13(4) of the IFR whereby a change in the business activities of a MiFID investment firm may be considered material if the relevant K-Factor capital requirement would change by at least 30% or there is an absolute change of EUR 2 million.

[16] Level of Assets under Management and on-going advice; Assets Safeguarded and Administered and Client Money Held

[17] Net Position Risk based on the rules for market risk for positions in financial instruments

[18] Trading counterparty default and concentration risk which constitute a simplified application of the counterparty credit risk and large exposures risk set out in the CRR.

[19] Insert reference once published by the Commission

Replacement of missing historical data points in relation to a specific K-factor component

48. Under Articles 17, 18, 19, 20 and 33 of the IFR, competent authorities may replace missing historical data points in relation to a specific K-factor component by regulatory determination based on the business projections of the MiFID investment firm submitted to the Central Bank in accordance with Regulation 9 of S.I. No. 375 of 2017.

49. These discretions are technical in nature and allow for the smooth implementation of the IFD/IFR regime. The Central Bank proposes to exercise these discretions on a case-by-case basis where relevant historical data is not available.

6. Variable Remuneration

50. The Minister of Finance has allocated certain discretions on variable remuneration to the Central Bank.

On-and-off Balance Sheet thresholds for variable remuneration

51. Under Regulation 29(10) of the IFD Regulations the Central Bank can increase the threshold, of on average equal to or less than €100 million of on and off-balance sheet assets over the four-year period immediately preceding the given financial year set out in Regulation 29(9) above which the requirements for pay out of variable remuneration process pursuant to paragraph (1)(j) and (l) and paragraphs (6) and (7) of Regulation 29 apply, up to a maximum of €300 million provided the criteria specified in paragraphs (a) and (b) of Regulation 29(10) are met.

52. The Central Bank will exercise this discretion on the default threshold for variable remuneration on a case-by-case basis.

Use of alternative arrangements in the pay out of variable remuneration

53. Under Regulation 29(1)(k) of the IFD Regulations where a MiFID investment firm does not issue any of the instruments set out in Regulation 29(j) the Central Bank can approve the use of alternative arrangements for the pay out of variable remuneration where such arrangements fulfil the same objectives.

54. The Central Bank will consider applications for approval to use such arrangements on a case-by-case basis.

Appendix I –Competent Authority Discretions in the IFD Regulations

- IFD Article - S.I. 355/2021 Regulation	Text of Article	Text of Transposing Regulation	Area	Proposed Treatment	Comment
- **Article 5 (1) Discretion of competent authorities to subject certain investment firms to the requirements of Regulation (EU) 575/2013** **- Regulation 4 (1) Bank Discretion**	1.Competent authorities may decide to apply the requirements of Regulation (EU) No 575/2013 pursuant to point (c) of the first subparagraph of Article 1(2) of Regulation (EU) 2019/2033 to an investment firm that carries out any of the activities listed in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU, where the total value of the consolidated assets of the investment firm is equal to or exceeds EUR 5 billion, calculated as an average of the previous 12 months, and one or more of the following criteria apply: (a) the investment firm carries out those activities on such a scale that the failure or the distress of the investment firm could lead to systemic risk; (b) the investment firm is a clearing member as defined in point (3) of Article 4(1) of Regulation (EU) 2019/2033; (c) the competent authority considers it to be justified in light of the size, nature, scale and complexity of the activities of the investment firm concerned, taking into account the principle of proportionality and having regard to one or more of the following factors: (i) the importance of the investment firm for the economy of the Union or of the relevant Member State; (ii) the significance of the investment firm's cross-border activities; (iii) the interconnectedness of the investment firm with the financial system.	4. (1) Subject to paragraph (2), the Bank may decide to apply the requirements of Regulation (EU) No 575/2013 pursuant to point (c) of the first subparagraph of Article 1(2) of Regulation (EU) 2019/2033 to an investment firm that carries out any of the activities listed in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU, where— (*a*) the total value of the consolidated assets of the investment firm is equal to or exceeds €5,000,000,000, calculated as an average of the previous 12 months, and (b) one or more of the following criteria apply: (i) the investment firm carries out those activities on such a scale that the failure or the distress of the investment firm could lead to systemic risk; (ii) the investment firm is a clearing member as defined in point (3) of Article 4(1) of Regulation (EU) 2019/2033; (iii) the Bank considers it to be justified in light of the size, nature, scale and complexity of the activities of the investment firm concerned, taking into account the principle of proportionality and having regard to one or more of the following factors: (I) the importance of the investment firm for the economy of the European Union or of the State; (II) the significance of the investment firm's cross-border activities; (III) the interconnectedness of the investment firm with the financial system.	Application of CRDIV/CRR to Certain MiFID investment firms	Exercise on a case-by-case basis.	See Section 1

- IFD Article - S.I. 355/2021 Regulation	Text of Article	Text of Transposing Regulation	Area	Proposed Treatment	Comment
- **Article 24 (2) Internal Capital and Liquid Assets** **- Regulation 21 (3) Internal Capital and liquid assets**	2. The arrangements, strategies and processes referred to in paragraph 1 shall be appropriate and proportionate to the nature, scale and complexity of the activities of the investment firm concerned. They shall be subject to regular internal review. Competent authorities may request investment firms which meet the conditions for qualifying as small and non- interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033 to apply the requirements provided for in this Article to the extent that the competent authorities deem it to be appropriate.	(3) Where an investment firm meets the conditions, set out in Article 12(1) of Regulation (EU) 2019/2033, to qualify as a small and non-interconnected investment firm, the Bank may request the firm to apply the requirements provided for in this Regulation to the extent that the Bank deems it to be appropriate.	Capital and Liquidity	The Central Bank has exercised this discretion and this requirement applies generally to all Class 3 MiFID investment firms.	See Section 3
-Article 32 (1)(k) Variable Remuneration **-Regulation 29 (1)(k) Variable Remuneration**	1. Member States shall ensure that any variable remuneration awarded and paid by an investment firm to categories of staff referred to in Article 30(1) complies with all of the following requirements under the same conditions as those set out in Article 30(3)… (k) by way of derogation from point (j) where an investment firm does not issue any of the instruments referred to in that point competent authorities may approve the use of alternative arrangements fulfilling the same objectives.	Variable remuneration awarded and paid by an investment firm to categories of staff referred to in Regulation 27(1) shall comply with all the following requirements in a manner that is appropriate to its size and internal organisation and to the nature, scope and complexity of its activities… (k) by way of derogation from subparagraph (j), where an investment firm does not issue any of the instruments referred to in that point the Bank may approve the use of alternative arrangements fulfilling the same objectives.	Remuneration	Request for permissions from individual MiFID investment firms considered on case by case basis	N/A
-Article 32 (5) Variable Remuneration **-Regulation 29 (10)**	5. By way of derogation from point (a) of paragraph 4, a Member State may increase the threshold referred to in that point, provided that the investment firm meets the following criteria: (a) the investment firm is not, in the Member State in which it is established, one of the three largest investment firms in terms of total value of assets;	(10) The Bank may specify, for the purposes of paragraph (8)(a), a threshold for an investment firm that is greater than €100,000,000 and less than or equal to €300,000,000 where— (*a*) the Bank is satisfied that it is appropriate to apply a threshold of the specified amount to the investment firm, taking into account the nature and	Remuneration	Exercise on a case-by-case basis.	See Section 6

- IFD Article - S.I. 355/2021 Regulation	Text of Article	Text of Transposing Regulation	Area	Proposed Treatment	Comment
Variable Remuneration	(b) the investment firm is not subject to obligations or is subject to simplified obligations in relation to recovery and resolution planning in accordance with Article 4 of Directive 2014/59/EU; (c) the size of the investment firm's on and off-balance sheet trading-book business is equal to or less than EUR 150 million; (d) the size of the investment firm's on and off-balance sheet derivative business is equal to or less than EUR 100 million; (e) the threshold does not exceed EUR 300 million; and (f) it is appropriate to increase the threshold, taking into account the nature and scope of the investment firm's activities, its internal organisation, and, where applicable, the characteristics of the group to which it belongs.	scope of the investment firm's activities, its internal organisation, and, where applicable, the characteristics of the group to which it belongs, and (b) the investment firm satisfies the following criteria: (i) the investment firm is not one of the three largest investment firms established in the State in terms of total value of assets; (ii) the investment firm is not subject to obligations or is subject to simplified obligations in relation to recovery and resolution planning in accordance with Article 4 of Directive 2014/59/EU; (iii) the size of the investment firm's on and off-balance sheet trading-book business is equal to or less than €150,000,000; (iv) the size of the investment firm's on and off-balance sheet derivative business is equal to or less than €100,000,000.			

- IFD Article - S.I. 355/2021 Regulation	Text of Article	Text of Transposing Regulation	Area	Proposed Treatment	Comment
- **Article 55 (3) Assessment of third-country supervision and other supervisory techniques** - **Regulation 50 (5) Assessment of third-country supervision and other supervisory techniques**	3.The competent authority which would be the group supervisor had the parent undertaking been established in the Union may, in particular, require the establishment of an investment holding company or mixed financial holding company in the Union and apply Article 7 or 8 of Regulation (EU) 2019/2033 to that investment holding company or mixed financial holding company.	(5) The Bank may, where it would have been the group supervisor had the parent undertaking been established in the European Union, in particular, require the establishment of an investment holding company or mixed financial holding company in the European Union and apply Article 7 or 8 of Regulation (EU) 2019/2033 to that investment holding company or mixed financial holding company, as the case may be..	Supervision	Exercise on a case-by-case basis.	N/A

Appendix II –Competent Authority Discretions in IFR and, by reference, CRR

IFR reference	Text of Article	Area	Treatment	Comment
Article 1 (5) **Subject matter and scope**	5. By way of derogation from paragraph 1, competent authorities may allow an investment firm authorised and supervised under Directive 2014/65/EU that carries out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU to apply the requirements of Regulation (EU) No 575/2013 where all of the following conditions are fulfilled: (a) the investment firm is a subsidiary and is included in the supervision on a consolidated basis of a credit institution, a financial holding company or a mixed financial holding company, in accordance with the provisions of Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013; (b) the investment firm notifies the competent authority under this Regulation and the consolidating supervisor, if applicable; (c) the competent authority is satisfied that the application of the own funds requirements of Regulation (EU) No 575/2013 on an individual basis to the investment firm and on a consolidated basis to the group, as applicable, is prudentially sound, does not result in a reduction of the own funds requirements of the investment firm under this Regulation, and is not undertaken for the purposes of regulatory arbitrage. Competent authorities shall inform the investment firm of a decision to allow the application of Regulation (EU) No 575/2013 and Directive 2013/36/EU pursuant to the first subparagraph within two months from the receipt of a notification referred to in point (b) of the first subparagraph of this paragraph, and shall inform EBA thereof. Where a competent authority refuses to allow the application of Regulation (EU) No 575/2013 and Directive 2013/36/EU, it shall provide full reasons. Investment firms referred to in this paragraph shall be supervised for compliance with prudential requirements under Titles VII and VIII of Directive 2013/36/EU, including for the purposes of the determination of the consolidating supervisor where such investment firms belong to an investment firm group as defined	Application of CRR to Certain MiFID investment firms	Exercise on a case-by-case basis	See Section 1

IFR reference	Text of Article	Area	Treatment	Comment
	in point (25) of Article 4(1) of this Regulation. For the purposes of this paragraph, Article 7 of Regulation (EU) No 575/2013 shall not apply.			
Article 6 (1) (2) (3) **Exemptions**	1.Competent authorities may exempt an investment firm from the application of Article 5 in respect of Parts Two, Three, Four, Six and Seven, where all of the following conditions apply: (a) the investment firm meets the conditions for qualifying as a small and non-interconnected investment firm set out in Article 12(1); (b) one of the following conditions is satisfied: (i) the investment firm is a subsidiary and is included in the supervision on a consolidated basis of a credit institution, a financial holding company or a mixed financial holding company, in accordance with the provisions of Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013; (ii) the investment firm is a subsidiary and is included in an investment firm group supervised on a consolidated basis in accordance with Article 7; (c) both the investment firm and its parent undertaking are subject to authorisation and supervision by the same Member State; (d) the authorities competent for the supervision on a consolidated basis in accordance with Regulation (EU) No 575/2013 or in accordance with Article 7 of this Regulation agree to such an exemption; (e) own funds are distributed adequately between the parent undertaking and the investment firm, and all of the following conditions are satisfied: (i) there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the parent undertaking; (ii) upon prior approval by the competent authority, the parent undertaking declares that it guarantees the commitments entered into by the investment firm or that the risks in the investment firm are of negligible interest; (iii) the risk evaluation, measurement and control procedures of the parent undertaking include the investment firm; and (iv) the parent undertaking holds more than 50 % of the voting rights attached to shares in the capital of the investment firm or has the	Exemptions	Exercise on a case-by-case basis.	See section 4 for further discussion on Article 6(3).

IFR reference	Text of Article	Area	Treatment	Comment
	right to appoint or remove a majority of the members of the investment firm's management body. 2.Competent authorities may exempt investment firms from the application of Article 5 in respect of Part Six where all of the following conditions apply: (a) the investment firm meets the conditions for qualifying as a small and non-interconnected investment firm set out in Article 12(1); (b) the investment firm is a subsidiary and is included in the supervision on a consolidated basis of an insurance or reinsurance undertaking in accordance with Article 228 of Directive 2009/138/EC; (c) both the investment firm and its parent undertaking are subject to authorisation and supervision by the same Member State; (d) the authorities competent for the supervision on a consolidated basis in accordance with Directive 2009/138/EC agree to such an exemption; (e) own funds are distributed adequately between the parent undertaking and the investment firm and all of the following conditions are satisfied: (i) there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the parent undertaking; (ii) upon prior approval by the competent authority, the parent undertaking declares that it guarantees the commitments entered into by the investment firm or that the risks in the investment firm are of negligible interest; (iii) the risk evaluation, measurement and control procedures of the parent undertaking include the investment firm; and (iv) the parent undertaking holds more than 50 % of the voting rights attached to shares in the capital of the investment firm or has the right to appoint or remove a majority of the members of the investment firm's management body. 3.Competent authorities may exempt investment firms from the application of Article 5 in respect of Part Five where all of the following conditions are satisfied: (a) the investment firm is included			

IFR reference	Text of Article	Area	Treatment	Comment
	in the supervision on a consolidated basis in accordance with Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013 or is included in an investment firm group for which Article 7(3) of this Regulation applies and the exemption provided for in Article 7(4) does not apply; (b) the parent undertaking, on a consolidated basis, monitors and has oversight at all times over the liquidity positions of all institutions and investment firms within the group or sub-group that are subject to a waiver and ensures a sufficient level of liquidity for all of those institutions and investment firms; (c) the parent undertaking and the investment firm have entered into contracts that, to the satisfaction of the competent authorities, provide for the free movement of funds between the parent undertaking and the investment firm to enable them to meet their individual obligations and joint obligations as they become due; (d) there is no current or foreseen material, practical or legal impediment to the fulfilment of the contracts referred to in point (c); (e) the authorities competent for the supervision on a consolidated basis in accordance with Regulation (EU) No 575/2013 or in accordance with Article 7 of this Regulation agree to such an exemption			
Article 7 (4) Prudential consolidation	4. By way of derogation from paragraph 3, competent authorities may exempt the parent undertaking from compliance with that paragraph, taking into account the nature, scale and complexity of the investment firm group.	Liquidity	Exercise on a case-by-case basis.	See Section 4
Article 8 (1) (4) **The group capital test**	1. By way of derogation from Article 7, competent authorities may allow the application of this Article in the case of group structures which are deemed to be sufficiently simple, provided that there are no significant risks to clients or to market stemming from the investment firm group as a whole that would otherwise require supervision on a consolidated basis. Competent authorities shall notify EBA when they allow the application of this Article. 4. Competent authorities may allow a Union parent investment holding company or a Union parent mixed financial holding company and any other parent undertaking that is an investment firm, a financial institution, an ancillary services undertaking or a tied agent	Own Funds	Exercise on a case-by-case basis.	N/A

IFR reference	Text of Article	Area	Treatment	Comment
	in the investment firm group, to hold a lower amount of own funds than the amount calculated under paragraph 3, provided that this amount is no lower than the sum of the own funds requirements imposed on an individual basis on its subsidiary investment firms, financial institutions, ancillary services undertakings and tied agents, and the total amount of any contingent liabilities in favour of those entities. For the purposes of this paragraph, the own funds requirements for subsidiary undertakings as referred to in the first subparagraph which are located in third countries shall be notional own funds requirements that ensure a satisfactory level of prudence to cover for the risks arising from those subsidiary undertakings, as approved by the relevant competent authorities.			
CRR Article 26(2) **Common Equity Tier 1 items** **(by reference from IFR Article 9 (1) (i) Own Funds)**	2. For the purposes of point (c) of paragraph 1, institutions may include interim or year-end profits in Common Equity Tier 1 capital before the institution has taken a formal decision confirming the final profit or loss of the institution for the year only with the prior permission of the competent authority. The competent authority shall grant permission where the following conditions are met: (a)those profits have been verified by persons independent of the institution that are responsible for the auditing of the accounts of that institution; (b)the institution has demonstrated to the satisfaction of the competent authority that any foreseeable charge or dividend has been deducted from the amount of those profits. A verification of the interim or year-end profits of the institution shall provide an adequate level of assurance that those profits have been evaluated in accordance with the principles set out in the applicable accounting framework.	Own Funds	Request for permissions from individual MiFID investment firms considered on case by case basis, in accordance with Commission Delegated Regulation No.241 of 2014	N/A

IFR reference	Text of Article	Area	Treatment	Comment
CRR Article 26(3) **Common Equity Tier 1 items** **(by reference from IFR Article 9 (1) (i) Own Funds)**	3.Competent authorities shall evaluate whether issuances of capital instruments meet the criteria set out in Article 28 or, where applicable, Article 29. Institutions shall classify issuances of capital instruments as Common Equity Tier 1 instruments only after permission is granted by the competent authorities. By way of derogation from the first subparagraph, institutions may classify as Common Equity Tier 1 instruments subsequent issuances of a form of Common Equity Tier 1 instruments for which they have already received that permission, provided that both of the following conditions are met: (a)the provisions governing those subsequent issuances are substantially the same as the provisions governing those issuances for which the institutions have already received permission; (b)institutions have notified those subsequent issuances to the competent authorities sufficiently in advance of their classification as Common Equity Tier 1 instruments. Competent authorities shall consult EBA before granting permission for new forms of capital instruments to be classified as Common Equity Tier 1 instruments. Competent authorities shall have due regard to EBA's opinion and, where they decide to deviate from it, shall write to EBA within three months from the date of receipt of EBA's opinion setting out the rationale for deviating from the relevant opinion. This subparagraph does not apply to the capital instruments referred to in Article 31. On the basis of information collected from competent authorities, EBA shall establish, maintain and publish a list of all forms of capital instruments in each Member State that qualify as Common Equity Tier 1 instruments. In accordance with Article 35 of Regulation (EU) No 1093/2010, EBA may collect any information in connection with Common Equity Tier 1 instruments that it considers necessary to	Own Funds	Request for permissions/notifications from individual MiFID investment firms considered on case by case basis.	Please see CRR/CRD Implementation Notice for further detail on the Central Bank's approach to this permission and to the recognition of a capital contribution without the taking of shares as a CET1 item under CRR Article 26(1).

IFR reference	Text of Article	Area	Treatment	Comment
	establish compliance with the criteria set out in Article 28 or, where applicable, Article 29 of this Regulation and for the purpose of maintaining and updating the list referred to in this subparagraph. Following the review process set out in Article 80 and where there is sufficient evidence that the relevant capital instruments do not meet or have ceased to meet the criteria set out in Article 28 or, where applicable, Article 29, EBA may decide not to add those instruments to the list referred to in the fourth subparagraph or remove them from that list, as the case may be. EBA shall make an announcement to that effect that shall also refer to the relevant competent authority's position on the matter. This subparagraph does not apply to the capital instruments referred to in Article 31.			
IFR Article 9 (3) Own Funds	3.Investment firms shall apply the relevant provisions set out in Chapter 6 of Title I of Part Two of Regulation (EU) No 575/2013 when determining the own funds requirements pursuant to this Regulation. In applying those provisions, the supervisory permission in accordance with Articles 77 and 78 of Regulation (EU) No 575/2013 shall be deemed to be granted if one of the conditions set out in point (a) of Article 78(1) or in Article 78(4) of that Regulation is fulfilled.	Own Funds	Request for permission from individual MiFID investment firms under point (b) of CRR Article 78(1) or for a general prior permission shall be considered on case by case basis, in accordance with Commission Delegated Regulation No.241 of 2014	Relevant CRR Article 77/78 permissions listed below.
CRR Article 77 Conditions for reducing own funds and eligible liabilities	1.An institution shall obtain the prior permission of the competent authority to do any of the following: (a)reduce, redeem or repurchase Common Equity Tier 1 instruments issued by the institution in a manner that is permitted under applicable national law; (b)reduce, distribute or reclassify as another own funds item the share premium accounts related to own funds instruments;	Own Funds	Request for permissions from individual MiFID investment firms considered on case by case basis, in accordance with Commission Delegated Regulation No.241 of 2014, unless IFR Article 9(3) applies	N/A

IFR reference	Text of Article	Area	Treatment	Comment
	(c) effect the call, redemption, repayment or repurchase of Additional Tier 1 or Tier 2 instruments prior to the date of their contractual maturity. 2. An institution shall obtain the prior permission of the resolution authority to effect the call, redemption, repayment or repurchase of eligible liabilities instruments that are not covered by paragraph 1, prior to the date of their contractual maturity.			
CRR Article 78(1)-(3) Supervisory permission to reduce own funds	1. The competent authority shall grant permission for an institution to reduce, call, redeem, repay or repurchase Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments, or to reduce, distribute or reclassify related share premium accounts, where either of the following conditions is met: (a)before or at the same time as any of the actions referred to in Article 77(1), the institution replaces the instruments or the related share premium accounts referred to in Article 77(1) with own funds instruments of equal or higher quality at terms that are sustainable for the income capacity of the institution; (b)the institution has demonstrated to the satisfaction of the competent authority that the own funds and eligible liabilities of the institution would, following the action referred to in Article 77(1) of this Regulation, exceed the requirements laid down in this Regulation and in Directives 2013/36/EU and 2014/59/EU by a margin that the competent authority considers necessary. Where an institution provides sufficient safeguards as to its capacity to operate with own funds above the amounts required in this Regulation and in Directive 2013/36/EU, the competent authority may grant that institution a general prior permission to take any of the actions set out in Article 77(1) of this Regulation, subject to criteria that ensure that any such future action will be in accordance	Own Funds	Request for permission from individual MiFID investment firms under point (b) of CRR Article 78(1) and general prior permission from individual MiFID investment firms considered on case by case basis, in accordance with Commission Delegated Regulation No.241 of 2014	N/A

IFR reference	Text of Article	Area	Treatment	Comment
	with the conditions set out in points (a) and (b) of this paragraph. That general prior permission shall be granted only for a specified period, which shall not exceed one year, after which it may be renewed. The general prior permission shall be granted for a certain predetermined amount, which shall be set by the competent authority. In the case of Common Equity Tier 1 instruments, that predetermined amount shall not exceed 3 % of the relevant issue and shall not exceed 10 % of the amount by which Common Equity Tier 1 capital exceeds the sum of the Common Equity Tier 1 capital requirements laid down in this Regulation, in Directives 2013/36/EU and 2014/59/EU and a margin that the competent authority considers necessary. In the case of Additional Tier 1 or Tier 2 instruments, that predetermined amount shall not exceed 10 % of the relevant issue and shall not exceed 3 % of the total amount of outstanding Additional Tier 1 or Tier 2 instruments, as applicable. Competent authorities shall withdraw the general prior permission where an institution breaches any of the criteria provided for the purposes of that permission. 2. When assessing the sustainability of the replacement instruments for the income capacity of the institution referred to in point (a) of paragraph 1, competent authorities shall consider the extent to which those replacement capital instruments would be more costly for the institution than those capital instruments or share premium accounts they would replace. 3. Where an institution takes an action referred to in point (a) of Article 77(1) and the refusal of redemption of Common Equity Tier 1 instruments referred to in Article 27 is prohibited by applicable national law, the competent authority may waive the conditions set out in paragraph 1 of this Article, provided that the competent authority requires the institution to limit the redemption of such instruments on an appropriate basis.			

IFR reference	Text of Article	Area	Treatment	Comment
CRR Article 78(4) Supervisory permission to reduce own funds	4. Competent authorities may permit institutions to call, redeem, repay or repurchase Additional Tier 1 or Tier 2 instruments or related share premium accounts during the five years following their date of issuance where the conditions set out in paragraph 1 and one of the following conditions is met: (a)there is a change in the regulatory classification of those instruments that would be likely to result in their exclusion from own funds or reclassification as own funds of lower quality, and both the following conditions are met: (i)the competent authority considers such a change to be sufficiently certain; (ii)the institution demonstrates to the satisfaction of the competent authority that the regulatory reclassification of those instruments was not reasonably foreseeable at the time of their issuance; (b)there is a change in the applicable tax treatment of those instruments which the institution demonstrates to the satisfaction of the competent authority is material and was not reasonably foreseeable at the time of their issuance; (c)the instruments and related share premium accounts are grandfathered under Article 494b; (d)before or at the same time as the action referred to in Article 77(1), the institution replaces the instruments or related share premium accounts referred to in Article 77(1) with own funds instruments of equal or higher quality at terms that are sustainable for the income capacity of the institution and the competent authority has permitted that action on the basis of the determination that it would be beneficial from a prudential point of view and justified by exceptional circumstances;	Own Funds	IFR Article 9(3) applies	N/A

IFR reference	Text of Article	Area	Treatment	Comment
	(e)the Additional Tier 1 or Tier 2 instruments are repurchased for market making purposes.			
CRR Recital 75 Pre-approval for AT1/AT2 Instruments	This Regulation should not affect the ability of competent authorities to maintain pre-approval processes regarding the contracts governing Additional Tier 1 and Tier 2 capital instruments. In those cases such capital instruments should only be computed towards the institution's Additional Tier 1 capital or Tier 2 capital once they have successfully completed these approval processes.	Own Funds	The Central Bank will apply a pre-approval process for AT1 and Tier 2 instruments. Request for permission from individual MiFID investment firms considered on case by case basis	Please see the CRR/CRD Implementation Notice for further detail on the Central Bank's approach to this permission.
Article 9 (4) **Own funds composition**	4.For the purpose of applying point (a) of paragraph 1, for investment firms which are not legal persons or joint-stock companies or which meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of this Regulation, competent authorities may, after consulting the EBA, permit further instruments or funds to qualify as own funds for those investment firms, provided that those instruments or funds also qualify for treatment under Article 22 of Council Directive 86/635/EEC. On the basis of information received from each competent authority, EBA, together with ESMA, shall establish, maintain and publish a list of all the forms of instruments or funds in each Member State that qualify as such own funds. The list shall be published for the first time by 26 December 2020.	Own Funds	Exercise on a case-by-case basis.	This is similar to the current list of CET1 instruments published by the EBA under Article 26(3) of the CRR which remains relevant for the majority of MiFID investment firms[20]. Under this article a separate list of instruments is published by the EBA together with ESMA applicable to a limited number of MiFID investment firms that are not legal persons or joint-stock companies. Instruments set out on this list may be included in the calculation of own funds by such firms. Where a MiFID investment firm is seeking to add an instrument to this list it should consult with its

[20] https://www.eba.europa.eu/regulation-and-policy/own-funds

IFR reference	Text of Article	Area	Treatment	Comment
				supervisor at the earliest possible opportunity.
Article 10 (2) **Qualifying holdings outside the financial sector**	2. Competent authorities may prohibit an investment firm from having qualifying holdings as referred to in paragraph 1 where the amount of those holdings exceed the percentages of own funds laid down in that paragraph. Competent authorities shall make public their decision exercising this power without delay.	Large Exposures	The Central Bank is exercising this discretion and does not permit MiFID investment firms to have a qualifying holding in excess of the relevant threshold.	N/A
Article 13 (2) **Fixed overheads requirement**	2. Where the competent authority considers that there has been a material change in the activities of an investment firm, the competent authority may adjust the amount of capital referred to in paragraph 1.	Own Funds	Exercise on a case-by-case basis having due regard to the RTS developed under IFD Article 13(4).	Please see RTS on the calculation of fixed overheads requirement[21].
Article 15 (4) K-factor requirement and applicable coefficients	4.Where competent authorities consider that there has been a material change in the business activities of an investment firm that impacts the amount of a relevant K-factor, they may adjust the corresponding amount in accordance with point (a) of Article 39(2) of Directive (EU) 2019/2034.	K-Factor	Exercise on a case-by-case basis having due regard to the RTS developed under IFD Article 15(5).	Please see RTS specifying the methods for measuring K-Factors, the notion of segregated accounts and adjustments to K-DTF coefficient[22]
Article 17 (2) **Measuring AUM for the purposes of calculating K-AUM**	2.Where the investment firm has formally delegated the management of assets to another financial entity, those assets shall be included in the total amount of AUM measured in accordance with paragraph 1. Where another financial entity has formally delegated the management of assets to the investment firm, those assets shall be excluded from the total amount of AUM measured in accordance with paragraph 1.	K Factor	Exercise on a case-by-case basis.	See Section 5

[21] https://www.eba.europa.eu/regulation-and-policy/investment-firms

[22] https://www.eba.europa.eu/regulation-and-policy/investment-firms

IFR reference	Text of Article	Area	Treatment	Comment
	Where an investment firm has been managing assets for less than 15 months, or where it has done so for a longer period as a small and non-interconnected investment firm and now exceeds the threshold for AUM, it shall use historical data for AUM for the period specified under paragraph 1 as soon as such data becomes available to calculate K-AUM. The competent authority may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.			
Article 18 (2) **Measuring CMH for the purposes of calculating K-CMH**	2. Where an investment firm has been holding client money for less than nine months, it shall use historical data for CMH for the period specified under paragraph 1 as soon as such data becomes available to calculate K-CMH. The competent authority may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.	K Factor	Exercise on a case-by-case basis.	See Section 5
Article 19 (3) **Measuring ASA for the purposes of calculating K-ASA**	3.Where an investment firm has been safeguarding and administering assets for less than six months, it shall use historical data for ASA for the period specified under paragraph 1 as soon as such data becomes available to calculate K- ASA. The competent authority may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.	K Factor	Exercise on a case-by-case basis.	See Section 5
Article 20 (3) **Measuring COH for the purposes of calculating K-COH**	3.Where an investment firm has been handling client orders for less than six months, or has done so for a longer period as a small and non-interconnected investment firm, it shall use historical data for COH for the period specified under paragraph 1 as soon as such data becomes available to calculate K-COH. The competent authority may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.	K Factor	Exercise on a case-by-case basis.	See Section 5
IFR Article 23(1)	1. For the purposes of Article 21, the competent authority shall allow an investment firm to calculate K-CMG for all positions that are	K-Factors	Request for permissions from individual MiFID	N/A

IFR reference	Text of Article	Area	Treatment	Comment
Calculating K-CMG	subject to clearing, or on a portfolio basis, where the whole portfolio is subject to clearing or margining, under the following conditions: (a)the investment firm is not part of a group containing a credit institution; (b)the clearing and settlement of these transactions take place under the responsibility of a clearing member of a QCCP and that clearing member is a credit institution or an investment firm referred to in Article 1(2) of this Regulation, and the transactions are either centrally cleared in a QCCP or otherwise settled on a delivery versus payment basis under the responsibility of that clearing member; (c)the calculation of the total margin required by the clearing member is based on a margin model of the clearing member; (d)the investment firm has demonstrated to the competent authority that the choice of calculating RtM with K-CMG is justified by certain criteria, which may include the nature of the main activities of the investment firm which shall essentially be trading activities subject to clearing and margining under the responsibility of a clearing member, and the fact that other activities performed by the investment firm are immaterial in comparison to those main activities; and (e)the competent authority has assessed that the choice of the portfolio(s) subject to K-CMG has not been made with a view to engaging in regulatory arbitrage of the own funds requirements in a disproportionate or prudentially unsound manner. For the purpose of point (c) of the first subparagraph, the competent authority shall carry out a regular assessment to confirm that the margin model leads to margin requirements that reflect the risk characteristics of the products the investment firms trade in and takes into account the interval between margin collections, market		investment firms considered on case by case basis	

IFR reference	Text of Article	Area	Treatment	Comment
	liquidity and the possibility of changes over the duration of the transaction. The margin requirements shall be sufficient to cover losses that may result from at least 99 % of the exposures movements over an appropriate time horizon with at least a two-business days holding period. The margin models used by that clearing member to call the margin referred to in point (c) of the first subparagraph of this paragraph shall always be designed to achieve a level of prudence similar to that required in the provisions on margin requirements in Article 41 of Regulation (EU) No 648/2012.			
IFR Article 25(3) **Scope**	3.Subject to the prior approval of the competent authorities, an investment firm may exclude from the scope of the calculation of K-TCD transactions with a counterparty which is its parent undertaking, its subsidiary, a subsidiary of its parent undertaking or an undertaking linked by a relationship within the meaning of Article 22(7) of Directive 2013/34/ EU. Competent authorities shall grant approval if the following conditions are fulfilled: (a)the counterparty is a credit institution, an investment firm, or a financial institution, subject to appropriate prudential requirements; (b)the counterparty is included in the same prudential consolidation as the investment firm on a full basis in accordance with Regulation (EU) No 575/2013 or Article 7 of this Regulation, or the counterparty and the investment firm are supervised for compliance with the group capital test in accordance with Article 8 of this Regulation; (c)the counterparty is subject to the same risk evaluation, measurement and control procedures as the investment firm; (d)the counterparty is established in the same Member State as the investment firm;	K-Factors	Request for permissions from individual MiFID investment firms considered on case by case basis	N/A

IFR reference	Text of Article	Area	Treatment	Comment
	(e)there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities from the counterparty to the investment firm.			
IFR Article 25(4) **Scope**	4.By way of derogation from this Section, an investment firm may, subject to the approval of the competent authority, calculate the exposure value of derivative contracts listed in Annex II to Regulation (EU) No 575/2013 and for the transactions referred to in points (b) to (f) of paragraph 1 of this Article by applying one of the methods set out in Section 3, 4 or 5, Chapter 6, Title II, Part Three of Regulation (EU) No 575/2013 and calculate the related own funds requirements by multiplying the exposure value by the risk factor defined per counterparty type as set out in Table 2 in Article 26 of this Regulation. Investment firms included in the supervision on a consolidated basis in accordance with Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013 may calculate the related own funds requirement by multiplying the risk weighted exposure amounts, calculated in accordance with Section 1 of Chapter 2 of Title II of Part Three of Regulation (EU) No 575/2013, by 8 %.	K-Factors	Request for permissions from individual MiFID investment firms considered on case by case basis	N/A
IFR Article 29(6) **Potential future exposure**	6.The supervisory delta of options and swaptions may be calculated by the investment firm itself, using an appropriate model subject to the approval of competent authorities. The model shall estimate the rate of change of the value of the option with respect to small changes in the market value of the underlying. For transactions other than options and swaptions or where no model has been approved by the competent authorities, the delta shall be 1.	K-Factors	Request for permissions from individual MiFID investment firms considered on case by case basis	N/A
Article 30 (1 – last sub-paragraph) **Collateral**	1.(…) Competent authorities may change the volatility adjustment for certain types of commodities for which there are different levels of volatility in prices. They shall notify EBA of such decisions together with the reasons for the changes.	K-Factor	Exercise on a case-by-case basis.	See Section 5
Article 33 (4)	4.Where an investment firm has had a daily trading flow for less than nine months, it shall use historical data for DTF for the period specified under paragraph 1 as soon as such data becomes available	K-Factor	Exercise on a case-by-case basis.	See Section 5

IFR reference	Text of Article	Area	Treatment	Comment
Measuring DTF for the purposes of calculating K-DTF .	to calculate K-DTF. The competent authority may replace missing historical data points by regulatory determinations based on the business projections of the investment firm submitted in accordance with Article 7 of Directive 2014/65/EU.			
Article 38 (2) **Obligation to notify**	2.Competent authorities may grant the investment firm a limited period to comply with the limit referred to in Article 37.	Large Exposure	Exercise on a case-by-case basis under exceptional circumstances.	N/A
Article 41 (2) **Exclusions**	2.Competent authorities may fully or partially exempt the following exposures from the application of Article 37: (a) covered bonds; (b) exposures incurred by an investment firm to its parent undertaking, to other subsidiaries of that parent undertaking or to its own subsidiaries, insofar as those undertakings are supervised on a consolidated basis in accordance with Article 7 of this Regulation or with Regulation (EU) No 575/2013, are supervised for compliance with the group capital test in accordance with Article 8 of this Regulation, or are supervised in accordance with equivalent standards in force in a third country, and provided that the following conditions are met: (i) there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the parent undertaking; and (ii) the risk evaluation, measurement and control procedures of the parent undertaking include the financial sector entity.	Large Exposure	Exercise on a case-by-case basis.	N/A

IFR reference	Text of Article	Area	Treatment	Comment
Article 43 (1) **Liquidity requirement**	1. Investment firms shall hold an amount of liquid assets equivalent to at least one third of the fixed overhead requirement calculated in accordance with Article 13(1). By way of derogation from the first subparagraph of this paragraph, competent authorities may exempt investment firms that meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) from the application of the first subparagraph of this paragraph and shall duly inform EBA thereof. For the purposes of the first subparagraph, liquid assets shall be any of the following, without limitation to their composition: (a) the assets referred to in Articles 10 to 13 of Delegated Regulation (EU) 2015/61, subject to the same conditions regarding eligibility criteria and the same applicable haircuts as those laid down in those Articles; (b) the assets referred to in Article 15 of Delegated Regulation (EU) 2015/61, up to an absolute amount of EUR 50 million or the equivalent amount in domestic currency, subject to the same conditions regarding eligibility criteria, with the exception of the EUR 500 million threshold amount referred to in Article 15(1) of that Regulation, and the same applicable haircuts as those laid down in in that Article; (c) financial instruments not covered by points (a) and (b) of this subparagraph, traded on a trading venue for which there is a liquid market as defined in point (17) of Article 2(1) of Regulation (EU) No 600/2014 and in Articles 1 to 5 of Commission Delegated Regulation (EU) 2017/567 (26), subject to a haircut of 55 %; (d) unencumbered short-term deposits at a credit institution.	Liquidity	The Central Bank is not exercising this discretion on a general basis. The Central Bank may exercise this discretion on a case-by-case basis under exceptional circumstances giving due regard to any guidelines developed by the EBA in consultation with ESMA.	See Section 4

IFR reference	Text of Article	Area	Treatment	Comment
IFR Article 44(1) **Temporary reduction of the liquidity requirement**	1.Investment firms may, in exceptional circumstances, and after approval by the competent authority, reduce the amount of liquid assets held.	Liquidity	Request for permissions from individual MiFID investment firms considered on case by case basis	N/A

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