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Public hearing

Guidelines on the application of the group capital test for investment firm groups (EBA/CP/2023/16)

EBA, Prudential Regulation and Supervisory Policy

5 September 2023, Paris



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Group capital test: background

- Article 8 of the Regulation (EU) 2019/2033 (IFR) introduces the group capital test (GCT) as a derogation from the prudential consolidation for investment firm groups.
- Competent authorities may grant the authorisation to use the GCT when they deem that both the following conditions are fulfilled:
 - the group structure of the investment firm group is sufficiently simple;
 - 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.
- The IFR does not elaborate on the meaning of the two conditions above.
- Furthermore, competent authorities may allow an investment firm group to hold lower own funds than the amount calculated under the GCT, provided that this amount is no lower than the sum of the own funds requirements imposed on an individual basis to the undertakings of the group.

Group capital test: development of the guidelines

1. Observation of diverging practices across the EU:

- Since the date of application of the IFR, the EBA has observed different interpretations of the conditions set out in Art. 8 of the IFR.
- The heterogeneity of interpretations may lead to unlevel playing field among investment firm groups in the EU.

2. Identification of best practices and of objective criteria to specify the conditions of the IFR:

- The EBA launched a data collection and a survey to gather data and identify the best practices of the competent authorities.
- The outcome of this exercise has been taken into account for the development of the guidelines.

Against this background, the EBA has developed the draft Guidelines on its own initiative, in accordance with Article 16 of its founding Regulation.

Criteria to assess the simplicity of the group structure



- The competent authority may deem the group structure of an investment firm group when all the following criteria are met:
 - The group is constituted of no more than 6 undertakings;
 - The group is constituted of no more than 3 ownership levels;
 - The value of activities subject to K-AUM, K-ASA and K-CMH transferred within undertakings of the group is lower than 150% of the thresholds set in Art. 12(1) of the IFR, increased by 50% for each undertaking in excess of the second that has positive values for those K-factors;
 - The value of activities subject to K-NPR or K-CMG transferred within undertakings of the group is lower than twice the threshold set out in Art. 94(1)(b) of the CRR;
 - The competent authority assesses that the capital ties, the ownership structure and contractual agreements within the group are compatible with the use of the group capital test.

Criteria to assess the significance of the risk



- The competent authority may deem an investment firm group as not representing a significant risk to clients and to market when all the following criteria are met:
 - The ratio between the own funds requirement of the investment firm group calculated according to the GCT and the one calculated according to the prudential consolidation is equal to or higher than 90%
 - None of the undertakings of the investment firm group, including undertakings located in third countries, have outstanding issuance of equity or debt instruments which are not listed on a regulated exchange held by retail clients in the EU
 - There is a maximum of one undertaking within the group that is a clearing member.

Derogations from some criteria of the guidelines



- The competent authority may consider to derogate from the criteria set out in the guidelines in the following cases:
 - The group structure includes more than 6 undertakings, but the “GCT-to-prudential consolidation” ratio is equal or higher than 95%
 - The group structure includes more than 3 ownership levels, but the “GCT-to-prudential consolidation” ratio is equal or higher than 95%
 - The group structure includes more than 6 undertakings and 3 ownership levels, but the “GCT-to-prudential consolidation” ratio is equal or higher than 100%.

Proportionality for small and non-interconnected investment firms

- When an investment firm group is constituted of small and non-interconnected investment firms and ancillary services undertakings, the competent authority may grant the use of the GCT when the group fulfils the following conditions:
 - The ratio between the own funds requirement of the investment firm group calculated according to the GCT and the one calculated according to the prudential consolidation is equal to or higher than 90%
 - The competent authority assesses that the capital ties, the ownership structure and contractual agreements within the group are compatible with the use of the group capital test.

Criteria to allow the reduction of own funds and further clarifications for third countries subsidiaries

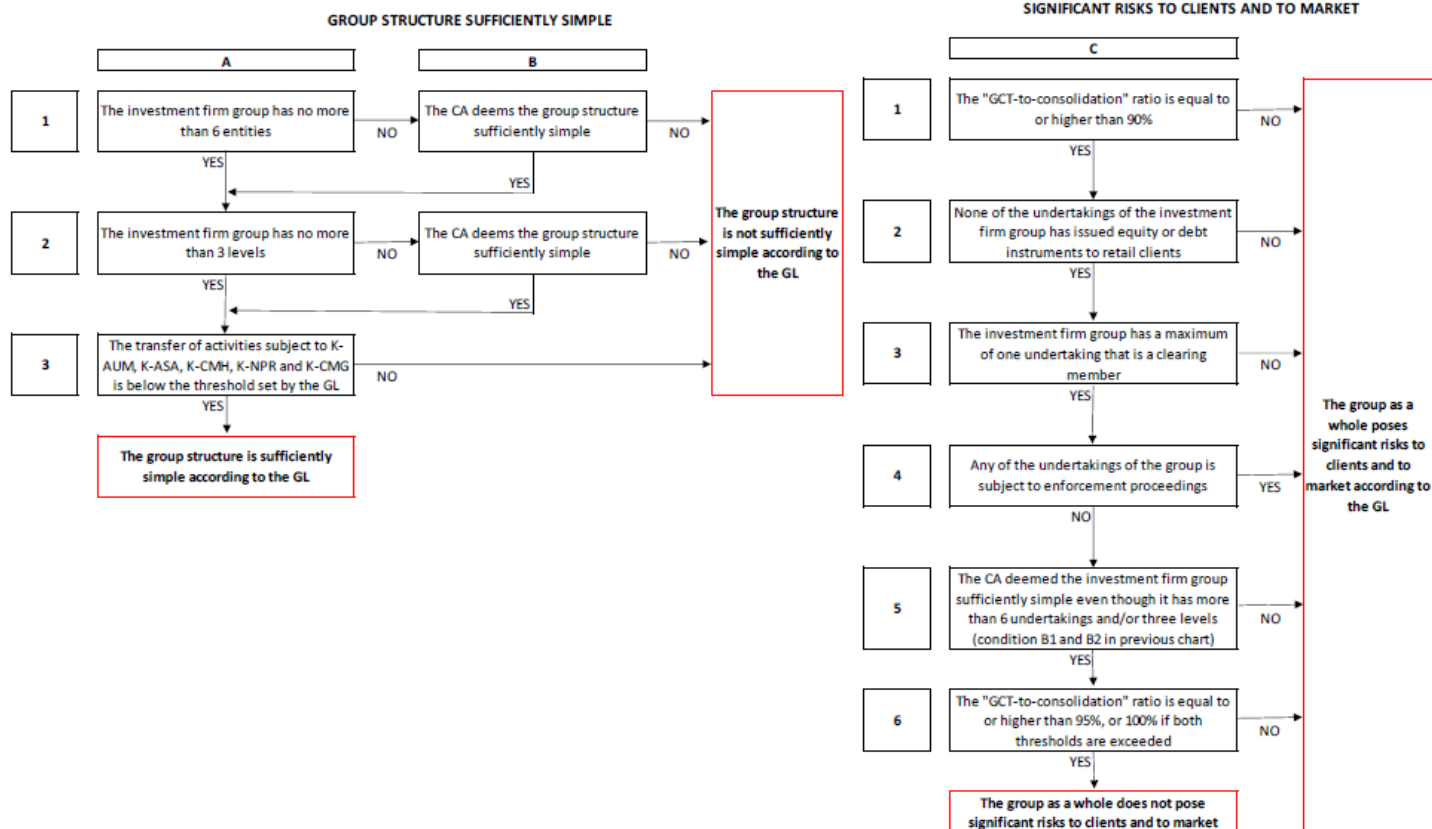
- Competent authorities may allow the reduction of own funds requirement if the ratio between the own funds requirement of the investment firm group calculated according to the GCT and the one calculated according to the prudential consolidation is equal to or higher than 125%.
- When allowing the reduction of own funds to an investment firm group that includes subsidiaries in third countries, the terms “notional own funds requirements” and “satisfactory level of prudence” mentioned in Art. 8(4) of the IFR should be intended as follows:
 - Notional own funds requirements: means the level of own funds calculated according to a methodology, or a prudential framework that may be different from those applicable to the third countries’ subsidiary undertakings under the local regulation.
 - Satisfactory level of prudence: means that the level of notional own funds requirements of the third countries subsidiary undertakings is equal or higher than the own funds requirements calculated according to the IFR

Information to be provided



- The information to provide to the competent authority should include at least those listed in the guidelines.
- Further simplifications are envisaged for groups which include only small and non-interconnected investment firms and ancillary services undertakings.

Overview on the application of the guidelines



References

- The consultation paper is available here:
 - [The EBA consults on Guidelines on the application of the group capital test for investment firm groups | European Banking Authority \(europa.eu\)](#)
 - Please note that the **deadline** for the submission of comments is **25 October 2023**.

Send your comments

Thank you!

If you have a question,
please put in the chat



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