



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY

Consultation Paper | CP22/20

# Designation of firms within certain consolidation groups

December 2020



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY

Consultation Paper | CP22/20

# Designation of firms within certain consolidation groups

December 2020

By responding to this consultation, you provide personal data to the Bank of England. This may include your name, contact details (including, if provided, details of the organisation you work for), and opinions or details offered in the response itself.

The response will be assessed to inform our work as a regulator and central bank, both in the public interest and in the exercise of our official authority. We may use your details to contact you to clarify any aspects of your response.

The consultation paper will explain if responses will be shared with other organisations (for example, the Financial Conduct Authority). If this is the case, the other organisation will also review the responses and may also contact you to clarify aspects of your response. We will retain all responses for the period that is relevant to supporting ongoing regulatory policy developments and reviews. However, all personal data will be redacted from the responses within five years of receipt. To find out more about how we deal with your personal data, your rights or to get in touch please visit [bankofengland.co.uk/legal/privacy](https://bankofengland.co.uk/legal/privacy).

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure to other parties in accordance with access to information regimes including under the Freedom of Information Act 2000 or data protection legislation, or as otherwise required by law or in discharge of the Bank's functions.

Please indicate if you regard all, or some of, the information you provide as confidential. If the Bank of England receives a request for disclosure of this information, we will take your indication(s) into account, but cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system on emails will not, of itself, be regarded as binding on the Bank of England.

Responses are requested by 5pm on Wednesday 16 December 2020.

**In light of current measures to help prevent the spread of COVID-19, please address any comments or enquiries by email to: [CP22\\_20@bankofengland.co.uk](mailto:CP22_20@bankofengland.co.uk).**

Alternatively, please address any comments or enquiries to:

Gavin Mills  
Prudential Regulation Authority  
20 Moorgate  
London  
EC2R 6DA

## Contents

---

<b>1</b>	<b>Overview</b>	<b>1</b>
<b>2</b>	<b>Proposals</b>	<b>4</b>
<b>3</b>	<b>The PRA's statutory obligations</b>	<b>5</b>
<b>4</b>	<b>Appendices</b>	<b>8</b>

---

## 1 Overview

1.1 This Consultation Paper (CP) sets out the Prudential Regulation Authority's (PRA) proposed approach to designating entities within certain banking UK consolidation groups as responsible for ensuring that consolidated prudential requirements are met during a transitional period. Relevant holding companies will need to apply for approval or exemption in accordance with The Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020, referred to here as 'the SI'.<sup>1</sup> The proposals in this CP apply to the period between Monday 28 December 2020 and the date on which the UK parent holding company's application for approval or exemption is finally determined.<sup>2</sup>

1.2 The PRA proposes to create a new Part of the PRA Rulebook (the Designation Part) (see Appendix).

1.3 This CP is relevant to banks and PRA-designated investment firms (firms) that are part of a UK consolidation group controlled by a UK parent financial holding company (FHC) or a UK parent mixed financial holding company (MFHC).

1.4 The PRA drew attention to the need to require PRA firm subsidiaries of certain groups to meet CRR requirements for the purposes of consolidated supervision as part of CP17/20 'Capital Requirements Directive V (CRD V): Further implementation'.<sup>3</sup> This CP supplements that consultation, specifying the PRA's proposals. It should be read in conjunction with:

- CP12/20 'Capital Requirements Directive V (CRD V)'<sup>4</sup> and CP17/20; and
- the SI.

### Background

1.5 In May 2019, the EU published legislation to implement some of the prudential reforms agreed by the Basel Committee on Banking Supervision (BCBS). CRD V and CRR II amend CRD IV and CRR respectively.

1.6 CRR II applies directly in the EU. Some amendments apply from Monday 28 December 2020, before the end of the EU Exit Transition Period (transition period). As a result, they will become a specific type of UK law known as 'retained EU law', through the operation of the EU (Withdrawal) Act 2018 at the end of the transition period. The process of retaining and amending EU law so that it is operable in the UK after the end of the transition period is known as 'Nationalising the Acquis' or 'onshoring'. For further information on the PRA's approach to Nationalising the Acquis, please see CP13/20.<sup>5</sup>

<sup>1</sup> The Financial Holding Companies (Approval etc.) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020: <https://www.legislation.gov.uk/ukdsi/2020/9780348213621>.

<sup>2</sup> Ibid, at Regulation 4.

<sup>3</sup> October 2020: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/capital-requirements-directive-v-further-implementation>.

<sup>4</sup> July 2020: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/capital-requirements-directive-v>.

<sup>5</sup> 'UK withdrawal from the EU: Changes before the end of the transition period', September 2020: <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/uk-withdrawal-from-the-eu-changes-before-the-end-of-the-transition-period>.

## Consolidated prudential supervision

1.7 Consolidated supervision ensures, among other things, that groups have sufficient capital for risks anywhere in the group that might adversely affect regulated entities in the group. It reduces the likelihood of the failure of a PRA-authorised firm because of risks taken in another group entity.

1.8 Consolidated requirements generally apply prudential requirements to authorised firms and, where relevant, their parent(s), financial subsidiaries, and financial sibling companies as though they were one entity. The supervision of firms on a consolidated basis supports the PRA's objective to promote the safety and soundness of firms.

1.9 The SI introduces new requirements for certain types of parent FHC or MFHC that substantively control their group to be subject to supervisory approval. The SI specifies the conditions that must be met in order for the PRA to grant approval. The approval conditions must be met at the point of approval and on a continuing basis thereafter.

1.10 From Monday 28 December 2020, CRR II requires a UK consolidation group's approved parent holding company – where it has one – to become responsible for ensuring that consolidated prudential requirements are met.<sup>6</sup> CRR II does not, however, specify the entity or entities responsible for ensuring compliance with consolidated prudential requirements for the period from Monday 28 December 2020 until the date on which the UK parent financial holding company's application for approval or exemption is finally determined. The proposals in Chapter 2 of this CP set out how responsibility for meeting these consolidated requirements would be allocated during this period.

## Co-ordination with other UK bodies

1.11 The PRA has consulted the Financial Conduct Authority (FCA) on CRD V implementation where it affects FCA objectives. Responses to this CP will be shared with the FCA where they are relevant to the FCA objectives.

## Implementation

1.12 The PRA proposes an implementation date for changes resulting from this CP of Monday 28 December 2020, to coincide with the transposition date for CRD V and the application of the relevant CRR II requirement on Monday 28 December 2020.<sup>7</sup>

## Responses and next steps

1.13 This consultation closes on Wednesday 16 December 2020. Please note that this is a shortened consultation period, necessary to meet the transposition date for CRD V and the application of the relevant CRR II requirement on Monday 28 December 2020. The PRA previously addressed this matter as part of CP17/20.

1.14 The PRA invites feedback on the proposals set out in this consultation. Please address any comments or enquiries to [CP22\\_20@bankofengland.co.uk](mailto:CP22_20@bankofengland.co.uk).

1.15 The proposals set out in this CP have been designed in the context of the UK's withdrawal from the European Union and the application of European law for the duration of the transition period.

---

<sup>6</sup> CRR II Article 11.

<sup>7</sup> CRR II Article 11.

The proposals set out in this CP would continue to apply after the end of the transition period, with appropriate provision to address any deficiency arising from the withdrawal of the UK from the EU.

## 2 Proposals

2.1 From Monday 28 December 2020, the proposed designation rule<sup>8</sup> would apply to a firm controlled by a parent FHC in a Member State, or a parent MFHC in a Member State, that would be under an obligation to comply with CRR requirements on a consolidated basis if Article 11(2) CRR was in force as it had effect in the UK on Sunday 27 December 2020. A firm or firms to which the designation rule applied would remain responsible for ensuring compliance with the group's consolidated prudential requirements under CRR, until the date on which the UK parent holding company's application for approval or exemption has been finally determined.

2.2 After Thursday 31 December 2020, following the end of the transition period, the proposed designation rule<sup>9</sup> would apply to a firm controlled by a UK parent FHC or a UK parent MFHC that would be under an obligation to comply with CRR requirements on a consolidated basis if Article 11(2) CRR were in force as it had effect in the UK on 27 December 2020. A firm or firms to which the designation rule applies would remain responsible for ensuring compliance with the group's consolidated prudential requirements under CRR, until the date on which the UK parent holding company's application for approval or exemption has been finally determined.

2.3 This designation would ensure the continuity of consolidated supervision, enabling the PRA to continue to supervise, monitor, exercise discretions, impose additional requirements, and enforce against breaches of obligations which apply on a consolidated basis. As a result, it would promote the safety and soundness of PRA-authorized firms.

2.4 The requirement for designation would not apply in the case of a UK consolidation group headed by a PRA-authorized firm. In such cases, the PRA-authorized firms within the group would continue to be responsible for ensuring that consolidated prudential requirements are met.

---

<sup>8</sup> Designation (Consolidation) Instrument 2020.

<sup>9</sup> Designation (Consolidation) (EU Exit) Instrument 2020.

### 3 The PRA's statutory obligations

3.1 In carrying out its policy making functions, the PRA is required to comply with several legal obligations. Before making any rules, FSMA<sup>10</sup> requires the PRA to publish a draft of the proposed rules accompanied by:

- a cost benefit analysis;
- an explanation of the PRA's reasons for believing that making the proposed rules is compatible with the PRA's duty to act in a way that advances its general objective,<sup>11</sup> and secondary competition objective;<sup>12</sup>
- an explanation of the PRA's reasons for believing that making the proposed rules are compatible with its duty to have regard to the regulatory principles;<sup>13</sup> and
- a statement as to whether the impact of the proposed rules will be significantly different to mutuals than to other persons.<sup>14</sup>

3.2 The Prudential Regulation Committee should have regard to aspects of the Government's economic policy as recommended by HMT.<sup>15</sup>

3.3 The PRA is also required by the Equality Act 2010<sup>16</sup> to have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out its policies, services, and functions.

#### Cost benefit analysis

3.4 This section sets out an analysis of the costs and benefits of applying the proposed approach to transitional designation. Given that the proposed approach would have the effect of maintaining firms' current responsibilities for a transitional period before applications for holding company approval or exemption are processed, the PRA has not undertaken quantitative estimates or data collection for this analysis, as it anticipates there would be no cost to firms.

3.5 The PRA estimates that 60 holding companies would fall in scope of the specific holding company application requirements, requiring approval or exemption from approval.

3.6 The proposal for designation would ensure the continued application of consolidated prudential requirements, thereby enabling the PRA to continue to carry out effective consolidated supervision. In the absence of these proposals, no specific entity within the group would be accountable for the group meeting its consolidated requirements. This outcome would undermine the benefits of the PRA's prudential regime by reducing the ability of the PRA to hold a group entity accountable for any breach of consolidated prudential requirements. The PRA therefore considers that this proposal has positive benefits, although it would not be practicable to provide an estimate.

---

<sup>10</sup> Section 138J of FSMA.

<sup>11</sup> Section 2B of FSMA.

<sup>12</sup> Section 2H(1) of FSMA.

<sup>13</sup> Sections 2H(2) and 3B of FSMA.

<sup>14</sup> Section 138K of FSMA.

<sup>15</sup> Section 30B of the Bank of England Act 1998.

<sup>16</sup> Section 149.

3.7 The introduction of the proposed rule maintains the current responsibilities of PRA-authorized firms in a group. The PRA therefore considers that its proposed approach to designation would involve no additional costs for firms. The proposals would ensure that consolidated prudential requirements continue to be applied during the transitional period prior to the date on which the UK parent holding company's application for approval or exemption is finally determined. The proposed approach would also be the most cost-efficient one for the PRA and for firms. Consequently, the PRA considers that the proposals outlined in this CP are net beneficial.

### **Compatibility with the PRA's objectives**

3.8 The PRA considers that the proposals in this CP advance its general objective to promote the safety and soundness of PRA-authorized firms. In particular, they seek to ensure that there is continuity of consolidated supervision from the date on which relevant on-shored CRR II applies until such time as a group's UK parent holding company's application for approval or exemption is finally determined. As noted in this CP, the absence of these proposals would undermine the benefits of the PRA's prudential regime.

3.9 The PRA has a secondary objective to facilitate effective competition. The PRA does not expect the proposals to have a material impact on competition, as they seek to ensure the PRA's existing approach to consolidated supervision continues to apply until such time as a group's UK parent holding company's application for approval or exemption, is finally determined. The PRA has not identified any impacts on firms that are likely to: (i) materially affect the operating costs of any cohort of affected firms that compete in the relevant markets; or (ii) materially change the behaviour of any particular firm.

### **Regulatory principles**

3.10 In developing the proposals in this CP, the PRA has had regard to the regulatory principles. Two principles are of particular significance for these proposals.

3.11 The principle that the PRA's resources are used in the most efficient and economical way. The proposals ensure the continuity of consolidated supervision of PRA firms in an efficient and effective manner. Furthermore, the introduction of a rule to give effect to designation is more appropriate and cost-effective than giving individual directions to every firm in a relevant group.

3.12 The principle that the PRA should exercise its functions transparently. The proposals in this CP aid transparency by providing clarity to firms on the PRA's proposed approach to the application of consolidated requirements, and supervision on a consolidated basis, in the period from Monday 28 December 2020 until such time as a group's UK parent holding company's application for approval or exemption is finally determined.

### **Impact on mutuals**

3.13 Mutuals do not have parent financial holding companies and therefore the proposals in this CP would not apply to them. This is appropriate, as PRA-authorized firms at the head of mutual groups will continue to be responsible for ensuring that their group meets CRR consolidated prudential requirements.

### **HM Treasury recommendation letter**

3.14 HM Treasury has made recommendations to the Prudential Regulation Committee (PRC) about aspects of the Government's economic policy to which the PRC should have regard when considering how to advance the PRA's objectives and apply the regulatory principles.<sup>17</sup>

3.15 The PRA has considered these aspects in relation to the proposals and considers competitiveness to be of particular relevance.

3.16 The PRA considers that the UK's competitiveness would be supported by the proposals, which allow for the continuity of consolidated supervision and promote the safety and soundness of PRA-authorized firms. The measures proposed in this CP help maintain a robust and resilient UK financial system, supporting London's position as a leading international financial centre and the UK's attractiveness to internationally active financial institutions.

### **Equality and diversity**

3.17 The PRA considers that the proposals do not give rise to equality or diversity implications.

---

17 Information about the PRC and the recommendations from HM Treasury are available on the Bank's website at: <https://www.bankofengland.co.uk/about/people/prudential-regulation-committee>.

## Appendices

---

**1 Draft Designation (Consolidation) Instrument 2020**

---

**2 Draft Designation (Consolidation) (EU Exit) Instrument 2020**

---

### **1 Draft Designation (Consolidation) Instrument 2020**

#### **PRA RULEBOOK: CRR FIRMS: DESIGNATION (CONSOLIDATION) INSTRUMENT 2020**

##### **Powers exercised**

A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

- (1) section 137G (The PRA’s general rules); and
- (2) section 137T (General supplementary powers).

B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

##### **Pre-conditions to making**

C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

##### **PRA Rulebook: CRR Firms: Designation (Consolidation) Instrument 2020**

D. The PRA makes the rules in the Annex to this instrument.

##### **Commencement**

E. This instrument comes into force on 28 December 2020.

##### **Citation**

F. This instrument may be cited as the PRA Rulebook: CRR Firms: Designation (Consolidation) Instrument 2020

##### **By order of the Prudential Regulation Committee**

[DATE]

## Annex

### Designation Part

In this Annex, the text is all new and is not underlined.

#### 1 APPLICATION AND DEFINITIONS

---

1.1 This Part applies to a *CRR firm* controlled by a *parent financial holding company in a Member State* or a *parent mixed financial holding company in a Member State* that would be under an obligation to comply with *CRR* requirements on a *consolidated basis* if Article 11(2) *CRR* was in force as it had effect in the *UK* on 27 December 2020.

1.2 In this Part, the following definitions shall apply:

*parent financial holding company in a Member State*

has the meaning set out at point (30) of Article 4(1) *CRR*.

*parent mixed financial holding company in a Member State*

has the meaning set out at point (31) of Article 4(1) *CRR*.

#### 2 CONSOLIDATION REQUIREMENTS

---

2.1 Subject to 2.2, a *firm* must comply with all *CRR* consolidation requirements with which its *parent financial holding company in a Member State* or *parent mixed financial holding company in a Member State* would be required to comply if it was approved or designated under Part 12B FSMA for the purpose of ensuring that *CRR* requirements are applied on a *consolidated basis*.

2.2 A *firm* is not required to comply with 2.1 if the *PRA* has approved or designated under Part 12B FSMA another undertaking within the *firm's consolidation group* for the purpose of ensuring that *CRR* requirements are applied on a *consolidated basis*.

## **2 Draft Designation (Consolidation) (EU Exit) Instrument 2020**

### **PRA RULEBOOK: DESIGNATION (CONSOLIDATION) (EU EXIT) INSTRUMENT 2020**

#### **Powers exercised**

- A. The Prudential Regulation Authority (“PRA”) being the appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), having carried out consultations pursuant to regulation 5 of the Regulations and with the approval of the Treasury to the following instrument, makes the instrument in exercise of the powers conferred by regulation 3 of the Regulations.

#### **Pre-conditions to making**

- B. A draft of this instrument has been approved by the Treasury, having been satisfied that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.
- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

### **PRA Rulebook: Designation (Consolidation) (EU Exit) Instrument 2020**

- D. The PRA makes the rules in the Annex to this instrument.

#### **Commencement**

- E. This instrument comes into force on IP completion day, as defined in the European Union (Withdrawal Agreement) Act 2020.

#### **Citation**

- F. This instrument may be cited as the PRA Rulebook: Designation (Consolidation) (EU Exit) Instrument 2020.

#### **By order of the Prudential Regulation Committee**

[DATE]

## Annex

### Designation Part

In this Annex new text is underlined and deleted text is struck through.

#### 1 APPLICATION AND DEFINITIONS

---

1.1 This Part applies to a *CRR firm* controlled by a UK parent financial holding company ~~in a Member State~~ or a UK parent mixed financial holding company ~~in a Member State~~ that would be under an obligation to comply with *CRR* requirements on a *consolidated basis* if Article 11(2) *CRR* was in force as it had effect in the *UK* on 27 December 2020.

1.2 In this Part, the following definitions shall apply:

*parent financial holding company in a Member State*

~~has the meaning set out at point (30) of Article 4(1) *CRR*.~~

*parent mixed financial holding company in a Member State*

~~has the meaning set out at [point (31) of Article 4(1) *CRR*.~~

#### 2 CONSOLIDATION REQUIREMENTS

---

2.1 Subject to 2.2, a *firm* must comply with all *CRR* consolidation requirements with which its UK parent financial holding company ~~in a Member State~~ or UK parent mixed financial holding company ~~in a Member State~~ would be required to comply if it was approved or designated under Part 12B FSMA for the purpose of ensuring that *CRR* requirements are applied on a *consolidated basis*.

2.2 A *firm* is not required to comply with 2.1 if the *PRA* has approved or designated under Part 12B FSMA another undertaking within the *firm's consolidation group* for the purpose of ensuring that *CRR* requirements are applied on a *consolidated basis*.