

DEFINITIONS OF ENTITIES OPERATING IN THE FINANCIAL SECTOR
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A number of parent companies of industrial and commercial groups have recently been notified by the ACPR of their status as a "mixed-activity holding company", thereby discovering the jungle of statuses related to financial activities.

Context and scope of the memorandum

The "CRD IV Package", composed of Directive No. 2013/36/EU of June 26, 2013 (**hereinafter the CRD IV Directive**), and EU Regulation No. 575/2013 of June 26, 2013 (**hereinafter CRR**), has modified the definitions of the different entities carrying out an activity in the financial sector, either directly or through companies controlled or in which they hold a stake.

The purpose of this alert is to review these new definitions, often little known, and the scope of these statuses.

Definitions resulting from the CRD IV Package

These definitions can be found both in the CRR Regulation and in the Monetary and Financial Code (MFC).

We have focused on the definitions as set out in Chapter VII, Title 1, Chapter VII of the MFC (i.e. financial holding companies, parent undertakings of finance companies, mixed financial holding companies, financial conglomerates, mixed holding companies and mixed parent undertakings of finance companies).

However, to fully grasp these concepts, we have also added some definitions from the CRR.

<p>• Parent undertaking</p> <p>Article 4, point 15 of the CRR</p>	<p>Undertaking which:</p> <ul style="list-style-type: none"> - has a majority of the shareholders' or members' voting rights in an undertaking (subsidiary), - or has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of the subsidiary, and is at the same time a shareholder in or member of that subsidiary, - or has the right to exercise a dominant influence over the subsidiary pursuant to a contract or to a provision in its articles of association, - or is a shareholder or member and a majority of the members of the administrative, management or supervisory bodies of the subsidiary have been appointed solely as a result of the exercise of its voting rights, or it controls alone a majority of shareholders' voting rights.
<p>• Institution</p>	<p>A credit institution or an investment firm.</p> <p>These are regulated entities within the meaning of the MFC (Article L 517-2, 1°)</p>

<p>• Financial Institution (Article 4 point 26 of the CRR)</p>	<p>An undertaking, <u>other than an institution</u>, the <u>principal activity</u> of which is to acquire holdings or to pursue one or more of the following activities:</p> <ul style="list-style-type: none"> - Lending including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting), - Financial leasing, - Payment services, - Issuing and administering other means of payment, - Guarantees and commitments, - Trading for own account or for account of customers in any of the following: money market instruments (cheques, bills, certificates of deposit, foreign exchange, financial futures and options, exchange and interest-rate instruments, transferable securities). - Participation in securities issues and the provision of services relating to such issues, - Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings, - Money broking, - Portfolio management and advice, 		<ul style="list-style-type: none"> - Safekeeping and administration of securities, - Issuing electronic money. <p>Financial institutions include financial holding companies, mixed financial holding companies, payment institutions and portfolio management companies, but exclude insurance holding companies and mixed-activity insurance holding companies.</p>
		<p>• Credit institution Article L 511-1 of the MFC (new definition since January 1, 2014)</p>	<p>Company whose business is to receive repayable funds from the public AND to grant loans.</p>
		<p>• Regulated entity Article L 517-2 of the MFC</p>	<ul style="list-style-type: none"> - Credit institution - Insurance company - Reinsurance company - Mutual insurance company - Provident institution - Investment firm <p>The CRD IV Directive also includes in this list:</p> <ul style="list-style-type: none"> - Portfolio management company - Alternative investment fund manager
		<p>• Investment firms</p>	<p>Legal entities, other than credit institutions, which provide investment services on a habitual basis.</p>

<p>• Finance company</p> <p>Article L 511-1 of the MFC</p>	<p>Companies, <u>other than credit institutions</u>, which carry out credit operations on a habitual basis and for their own account, under the conditions and within the limits defined by their approval.</p> <p>In addition to these operations, finance companies may carry out one of the following operations:</p> <ul style="list-style-type: none"> - provide payment services, - issue and manage electronic money, - provide investment services. <p>Finance companies are not authorised to receive funds from the public.</p>	<p>• Mixed financial holding company</p>	<p><u>Financial institution, which is not a regulated entity</u>, but has <u>at least one subsidiary that is a regulated entity</u> and which constitutes, with this subsidiary, a <u>financial conglomerate</u>.</p> <p>To form a financial conglomerate, the mixed company and its subsidiaries must participate in the banking and insurance sector and exceed the thresholds set out below.</p>
<p>• Financial holding company</p>	<p><u>Financial institution</u> whose subsidiaries are <u>exclusively or principally</u>:</p> <ul style="list-style-type: none"> - credit institutions, or - investment firms, or - financial institutions. <p><u>And which is not</u> a mixed financial holding company.</p>	<p>• Financial conglomerate</p> <p>Article L.517-3 of the MFC</p>	<p>This is a group of companies in which:</p> <ul style="list-style-type: none"> - A regulated entity is the head of the group or at least one of the subsidiaries of the group is a regulated entity and: <p>(a) Where a regulated entity is the head of the group, it must be either the parent undertaking of an entity of the financial sector, or an entity that holds a stake in an entity in the financial sector, or an entity related to an entity of the financial sector,</p> <p>(b) Where there is no regulated entity at the head of the group, the activities of the conglomerate must be exercised <u>primarily</u> in the financial sector.</p> <ul style="list-style-type: none"> - At least one of the group's entities belongs to the insurance sector and at least one belongs to the banking sector or to the investment services sector. - The consolidated or aggregated activities of the group's entities in the insurance sector, or in the banking sector or investment services sector are <u>significant</u>.
<p>• Parent undertaking of finance companies</p>	<p><u>Financial institution</u> whose subsidiaries, exclusively or principally, consist of one or more:</p> <ul style="list-style-type: none"> - finance companies, - financial institutions. <p>The difference with the financial holding company is that the parent undertaking of finance companies <u>does not have a credit institution among its subsidiaries</u>.</p> <p><u>And which is neither</u> a financial holding company, nor a mixed financial holding company, nor a mixed holding company.</p>		

	<p>The thresholds to consider whether a group carries out its activity <u>primarily</u> in the financial sector are defined by decree.¹</p> <p>A group <u>primarily</u> operates in the financial sector when the ratio between the balance sheet total of the regulated and non-regulated entities in the financial sector of the group and the balance sheet total of the group <u>exceeds 40%</u>.</p> <p>An activity is considered <u>significant</u> when the average value of the two ratios <u>below exceeds 10%</u>:</p> <ul style="list-style-type: none"> - The ratio between the balance sheet total of the insurance sector on the one hand, and the banking and investment sectors taken together on the other hand, and the balance sheet total of the entities of the group's entire financial sector, - the ratio between the solvency requirements of the insurance sector on the one hand, and of the banking and investment services sectors taken together on the other hand, and the total solvency requirement of the entities of the group's entire financial sector. 		<p>The activities of the sectors of a group are also considered significant when the balance sheet total of smallest sector within the group exceeds 6 billion Euros.</p> <p>If a group does not reach the threshold of 10% but reaches that of 6 billion Euros, the ACPR may decide not to consider this group as a financial conglomerate.</p> <p>• Mixed holding company</p> <p>Article L 517-4-1 of the MFC</p> <p>Company whose subsidiary is a credit institution or a finance company.</p> <p>AND which is not an institution, a financial holding company or a mixed financial holding company.</p> <p>• Mixed parent undertaking of a finance company</p> <p>Article L 517-4-1 of the MFC</p> <p>Parent undertaking which has <u>at least one finance company</u> among its subsidiaries.</p> <p>AND which is not a parent undertaking of a finance company, a financial holding company, a mixed financial holding company or a credit institution, an investment firm or a finance company.</p> <p>• Mixed group</p> <p>All the subsidiaries, direct or indirect, of a mixed holding company.</p>
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¹ Order of November 3, 2014 on the supplementary supervision of financial conglomerates:
<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000029706601>

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