

Delegation derogation

Market Integration & Supervision Package

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DUFAS welcomes the European Commission's proposal in the *Market Integration & Supervision Package* to introduce a delegation derogation. This initiative represents an important step towards a more proportionate and risk-based approach to outsourcing within financial groups, better aligned with market practice.

The European Commission aims to reduce fragmentation, duplication, and unnecessary compliance costs. DUFAS fully supports this objective and considers the derogation to be an appropriate instrument to achieve it.

At the same time, we believe that the effectiveness of the proposal can be further enhanced by adjusting its scope. In particular, we consider it important that:

1. the framework should also accommodate the regulated pension sector, where intra-group outsourcing is a fundamental part of operational practice.
2. its application extends to a broader category of group entities than currently defined; and
3. the derogation is not limited to group entities within the EU;

General support for the delegation derogation

The European Commission's proposal rightly acknowledges that outsourcing within a group differs fundamentally from outsourcing to third parties. These differences are significant and directly affect how risks are managed and how effective supervision can be exercised.

Within a group, there are typically highly integrated governance structures. Group entities operate under a shared policy framework, with centralized direction and consistent decision-making processes. Strategic choices, risk appetite, and control mechanisms are determined at group level and implemented across entities. This reduces information asymmetry compared to external outsourcing.

In addition, risk management systems are often shared. Functions such as risk management, compliance, and internal audit are frequently organized centrally and serve multiple entities within the group. This results in uniform standards, consistent monitoring, and more efficient risk control. In many cases, the quality of these systems exceeds that of external providers, as they are deeply embedded within the organization. This is especially the case as groups consist of (grand)mother-(grand)daughter relations, and corporate laws and controls regulate the flow of information, control, and management oversight.

Finally, there are shared strategic interests. Group entities have a common interest in the proper functioning of the organization as a whole. This reduces the risk of opportunistic behaviour that may arise with external service providers due to commercial incentives or conflicting interests.

As mentioned by the European Commission (see p8), if multiple *authorised* entities act within a group, the current regulatory framework does not recognise that this is the case and forces each individual company to meet organisational requirement on delegation separately and regardless of the intra-group context.

Against this background, the proposed more proportionate approach to intra-group outsourcing is justified. Simplifying administrative requirements where risks are demonstrably lower and better controlled helps avoid

unnecessary regulatory burden. This contributes to more efficient operations without compromising the quality of internal control.

It is important that the European Commission's proposal maintains the core principle that the outsourcing group entity remains fully responsible for all outsourced activities. This ultimate responsibility implies that institutions must:

- retain full visibility over outsourced processes;
- be able to intervene where necessary; and,
- remain accountable to supervisors and investors/participants.

This ensures that the derogation does not result in any shift or dilution of responsibility. It creates room for proportionality while preserving fundamental objectives such as risk management and accountability.

Need to expand the scope

While the European Commission's proposal is an excellent step in the right direction, we would like to propose considering extending its scope to better fit the market reality. The current scope 1) is excluding other regulated entities such as pension funds which work largely as group/intra-group entities, should include 2) other intra-group entities which are not regulated but fall under corporate control and 3) non-EU group entities to better reflect how financial groups operate and to avoid unnecessary complexity without clear benefits for risk management.

1) Include other regulated entities

First, this license-based approach is unduly restrictive. The pension sector, which is regulated through IORP, and highly significant in the Netherlands, is excluded from the proposed "EU group" definition, despite the widespread use of intra-group outsourcing and integrated governance structures within pension groups. As a result, a sector where proportionality is particularly relevant is effectively excluded from the benefits of the derogation.

Within pension and asset management groups, entities are often highly interconnected. They not only perform functions for one another but are also both involved in overseeing those same functions. For example, an IORP pension fund and an AIFM within the same group may both rely on shared functions such as risk management, compliance, and internal audit. These functions are typically organised centrally at group level and provide services to multiple entities. At the same time, each individual entity formally outsources these functions to that same group-level organisation. As a result, the group is responsible for overseeing the activities of the entities, while those entities are responsible for overseeing the outsourced function. This creates a situation of circular oversight, where supervision and accountability effectively sit within the same governance structure. In the current regulatory context, this can result in overlapping supervision of the same activities, leading to unnecessary duplication of controls, additional documentation requirements, and an increased administrative burden, without demonstrable improvements in risk management or supervision quality. This underscores the need for a more proportionate approach to intra-group outsourcing. A broader application of the delegation derogation could eliminate such inefficiencies.

2) Include entities within a group under (full) corporate control

Furthermore, intra-group outsourcing often involves other types of group entities, such as internal service centres, specialized operational entities, and group-wide support functions. These entities are often not regulated but form part of a group that contains at least one regulated entity, whose presence ensures that compliance requirements are effectively extended through shared governance structures and group policies.

They play a central role in the execution of specialist activities, centralised for a group as a whole. Excluding them significantly limits the practical scope of the derogation and misaligns the proposal with existing business models.

Moreover, the current limited scope runs contrary to broader developments in European regulation, where groups are increasingly viewed as a means to streamline governance and reduce duplication. Frameworks such as IFR/IFD and EBA guidelines recognize that governance requirements can be fulfilled at consolidated level and that group-wide structures (e.g., a central risk committee) are permissible, provided they ensure effective and integrated risk management.

In short, the current authorisation-based and sectoral approach does not reflect (Dutch) market practice, where other regulated entities, such as pension groups, as well as non-regulated entities, also play a key role. Expanding the definition is necessary to achieve the intended reduction in regulatory burden and to ensure proportionality.

3) Inclusion of non-EU group entities

Many financial groups operate on an international basis, with functions such as IT and administration often centralized at group level. These types of activities are frequently carried out by entities located outside the EU, for example to achieve economies of scale, pool specialised expertise, or enable 24/7 service provision.

Excluding non-EU group entities from the derogation has several undesirable consequences. First, it creates inconsistency within the same group: similar activities are treated differently depending on the location of the performing entity, even where governance and control mechanisms are identical.

Second, it leads to additional administrative burdens as institutions must still comply with the full (more stringent) outsourcing requirements for intra-group arrangements outside the EU, even where the non-EU entity is already subject to regulatory requirements in its home jurisdiction that are equivalent to the relevant EU standards. This entails additional documentation, contractual safeguards, and monitoring, even where the underlying risks are already effectively managed at group level.

More importantly, this approach does not reflect how risk is actually managed within groups. The extent to which risks are manageable depends primarily on the quality of governance, internal controls, and group integration, not on the geographical location of the entity. Where these conditions are met, there is no justification for excluding non-EU group entities.

Proposed amendment to the article

We would like to put forward a concrete proposal for an alternative formulation. In this regard, we note that, in our view, it is not necessary to introduce a separate “EU group” definition. If, nevertheless, a group definition is considered necessary, this could be achieved by referring to, or aligning with, Article 2(11) of Directive 2013/34/EU, which defines a group as a parent undertaking and all its subsidiary undertakings.

We propose to amend the wording of the proposed article as follows:

UCITSD

In Article 1 the following (...) is added

'(v) 'EU group of a management company and AIFM means, in relation to a given management company or AIFM, a group as defined in Article 2, point (11) of Directive 2013/34/EU of the European Parliament and the Council that consists of any of the following:

- (a) management companies, as defined in Article 2(1), point (b) of this Directive, that are established in the Union, and which are authorised in accordance with this Directive;*
- (b) managers of alternative investment funds, as defined in Article 4(1), point (b) of Directive 2011/61/EU of the European Parliament and of the Council²³ that are established in the Union, and which are authorised in accordance with that Directive;*
- (c) investment firms, as defined in Article 4(1), point (1) of Directive 2014/65/EU that are established in the Union, and which are authorised in accordance with that Directive;*
- (d) credit institutions as defined in Article 2(1), point (b) of Directive 2013/36/EU of the European Parliament and of the Council that are established in the Union, and which are authorised in accordance with that Directive.*
- (e) institutions for occupational retirement provision (IORPs), as defined in Article 6(1) of Directive 2016/2341 of the European Parliament and of the Council that are established in the Union, and which are authorised in accordance with that Directive.*

Article 13 is amended as follows:

(a) paragraph 2 is amended as follows:

'2. The liability of the management company or the depositary shall not be affected by the fact that the management company has delegated functions or services to a third party or has relied on one or more entities within its group to carry out its functions pursuant to paragraph 3, second subparagraph. The management company shall not delegate the functions or services or rely on the functions or services of one or more entities within its group to the extent that, in essence, it can no longer be considered to be the manager of the UCITS or the provider of the services referred to in Article 6(3) and to the extent that it becomes a letter-box entity.';

(b) in paragraph 3, the following subparagraph is added:

'By way of derogation from paragraph 1, where a management company relies on an entity within its group for the performance of one or more of their own functions, such arrangement shall not be considered as a delegation subject to the requirements set out in paragraph 1, where all of the following conditions are fulfilled:

(a) the entity belongs to the group of the management company;

(b) the management company has notified the competent authorities of its home Member State of the fact that it relies on another entity within its group to perform its functions or services;

(c) the entity has been duly authorised to perform those functions or services on behalf of the management company, provided that specific authorisation is required for this purpose';

AIFMD

A corresponding amendment should also be introduced in the AIFMD, in line with the approach outlined above, to ensure a consistent, proportionate, and risk-based treatment of intra-group arrangements across both frameworks.

Conclusion

DUFAS supports the proposal for a delegation derogation as an important step towards a more efficient and integrated European financial system.

At the same time, the effectiveness and proportionality of this instrument could be further strengthened by:

- explicitly accommodating sectors such as the pension sector, where intra-group outsourcing is an essential part of operational practice;
- allowing for a broader, more functional interpretation of a group; and
- extending the scope of the derogation to include non-EU group entities.

Such adjustments would lead to lower administrative burdens, better alignment with market practice, and more efficient governance structures, without compromising the quality of risk management or supervision.

The fundamental principles remain unchanged: institutions remain responsible for adequately identifying and managing outsourcing risks, establishing robust control mechanisms, and retaining full responsibility for all outsourced activities.

DUFAS would be pleased to further elaborate on these points.