

EN - Annex II

PART 1										
Options and discretions set out in Directive (EU) 2019/2034, Regulation (EU) 2019/2033										
	Directive (EU) 2019/2034	Regulation (EU) 2019/2033	Addressee	Denomination	Description of the option or discretion	Exercised (Y/N/NA) <sup>(1)</sup>	National text <sup>(2)</sup>	Reference(s) <sup>(3)</sup>	Available in EN (Y/N)	Details / Comments
010	Date of the last update of information in this template							(12/06/2023)		
020	5(1)		Competent authority	Application of CRD requirements	Competent authorities may decide to apply Regulation (EU) No 575/2013 to an investment firm that carries out activities specified in points 3 and 6 in Section A of Annex I of Directive 2014/65/EU where the total value of the consolidated assets of the investment firm is equal to or exceeds EUR 5 000 000 000 where conditions of Article 5(1) of Directive (EU) 2019/2034 apply.	Y	<b>Article 4 para. 1 WPFG:</b> (1) The FMA may order that an investment firm which trades for its own account pursuant to Article 1 no. 3 lit. c WAG 2018 or underwrites financial instruments and/or places financial instruments with a firm commitment basis pursuant to Article 1 no. 3 lit. f WAG 2018, and whose total assets are or exceed EUR 5 billion, shall apply the provisions of Regulation (EU) No 575/2013, if the investment firm: 1. conducts the listed activities to such an extent that the failure or failure or the distress of the investment firm could lead to systemic risk, or 2. is a clearing member pursuant to point 3 of Article 4 (1) of Regulation (EU) 2019/2033; 3. has, based on its size, its interconnectedness with the financial system, the nature, scope and complexity of its activities or the activities that it provides on a cross-border basis, significant relevance for the economy of the European Union or Austria.	<a href="#">§ 4 WPFG</a>	N	
030	24(2)		Competent authority	Internal capital and liquid assets	Competent authorities may request small and non-interconnected investment firms to apply requirements for internal capital and liquid assets as provided for in Article 24 of Directive (EU) 2019/2034.	Y	<b>Article 14 para. 2 WPFG:</b> The arrangements, strategies and processes referred to in para. 1 must be internally reviewed on a regular basis and shall be appropriate and proportionate to the nature, scale and complexity of the activities of the investment firm concerned.  <b>Article 14 para. 3 WPFG:</b> The FMA 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 consider appropriate. The FMA may define more specific criteria by means of a Regulation, under which the requirements listed in para. 1 for small and non-interconnected investment firms pursuant to Article 12 (1) of Regulation (EU) 2019/2033 shall be determined with regard to the nature, scope, risk profile and complexity of their business as well as investor protection. In so doing it shall also take into account the respective activity requiring a licence of the investment firm.	<a href="#">§ 14 WPFG</a>	N	
040	36(2)		Competent authority	Supervisory review and evaluation	Competent authorities shall decide on a case-by-case basis whether and in which form the review and evaluation is to be carried out for small and non-interconnected investment firms.	Y	<b>Article 25 para. 3 WPFG:</b> Taking into consideration the size, nature, scale and complexity of the activities of the affected investment firm as well as its systemic importance, the FMA shall determine the frequency and intensity of the review and evaluation pursuant to para. 1, and in so doing shall take into account the principle of proportionality and as well as the rules and the scope of authorisation with regarding to client funds.  <b>Article 25 para. 4 WPFG:</b> The FMA shall decide on a case-by-case basis whether and in which form the review and evaluation of an investment that meets the conditions listed in Article 12 (1) of Regulation (EU) 2019/2033 for classification as a small and non-interconnected investment firm is to be carried out, where this is deemed necessary due to the size, nature, scope and complexity of the activities as well as the activity requiring a licence of the investment firm in question.	<a href="#">§ 25 WPFG</a>	N	
050	40(7)		Competent authority	Additional own funds requirement	Competent authorities may impose on a case-by-case basis an additional own funds requirements referred to in Article 40 of Directive (EU) 2019/2034 on small and non-interconnected investment firms.	Y	<b>Article 29 para. 7 WPFG:</b> The FMA may prescribe an additional own funds requirement pursuant to paras. 1 to 6 to small and non-interconnected investment firms pursuant to Article 12 (1) of Regulation (EU) 2019/2033 based on an assessment of the case in hand and where it deemed doing so to be justified.	<a href="#">§ 29 WPFG</a>	N	

EN - Annex II

	Directive (EU) 2019/2034	Regulation (EU) 2019/2033	Addressee	Denomination	Description of the option or discretion	Exercised (Y/N/NA) <sup>(1)</sup>	National text <sup>(2)</sup>	Reference(s) <sup>(3)</sup>	Available in EN (Y/N)	Details / Comments
060	41(1)		Competent authority	Additional own funds requirement	Competent authorities may request investment firms which are not small and non-interconnected investment firms to have a level of own funds which would cover the potential impact of cyclical economic fluctuations.	Y	<b>Article 30 para. 1 WPFG:</b> (1) Taking into account the principle of proportionality and commensurate with the size, systemic importance, nature, scale and complexity of activities of investment firms that do not meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033, the FMA may require such investment firms to have levels of own funds pursuant to Article 14, they are sufficiently above the requirements set out in Part Three of Regulation (EU) 2019/2033 and in this Federal Act, to ensure that cyclical economic fluctuations do not lead to a breach of those requirements or threaten the ability of the investment firm to wind down and cease activities in an orderly manner.	<a href="#">§ 30 WPFG</a>	N	
070	42(1)		Competent authority	Liquidity requirements	Competent authorities shall impose specific liquidity requirements referred to in point (k) of Article 39(2) of Directive (EU) 2019/2034 for investment firms for which liquidity requirements apply as referred to in Article 42(1) of Directive (EU) 2019/2034.	Y	<b>Article 31 para. 1 WPFG:</b> (1) The FMA shall only be allowed to prescribe the additional liquidity requirement pursuant to Article 28 para. 2 no. 11, if it comes to the conclusion based on reviews conducted pursuant to Articles 25 and 26 that an investment firm that is not classified as a small and non-interconnected investment firm pursuant to Article 12 (1) of Regulation (EU) 2019/2033, or is classified as a small and non-interconnected investment firms pursuant to Article 12 (1) of Regulation (EU) 2019/2033, but which is not exempted from the liquidity requirement pursuant to Article 43 (1) of Regulation (EU) 2019/2033, is in one of the following situations: 1. the investment firm is exposed to liquidity risk or elements of liquidity risk that are material and are not covered or not sufficiently covered by the liquidity requirement set out in Part Five of Regulation (EU) 2019/2033; 2. the investment firm does not meet the requirements set out in Articles 14 and 16 and other administrative measures are unlikely to sufficiently improve the arrangements, processes, mechanisms and strategies within an appropriate timeframe;	<a href="#">§ 31 WPFG</a>	N	
080	46(6)		Competent authority	Exemption from group supervisor criteria	Competent authorities may designate a supervisor on a consolidated basis other than the one referred to in Article 46(6) of Directive (EU) 2019/2034.	Y	<b>Article 38 para. 2 WPFG:</b> (2) The FMA may, by common agreement with the competent authorities of the other relevant Member States and taking into consideration the investment firms concerned and the significance of their activities in Austria and in the other relevant Member States, waive the criteria referred to in para. 1 nos. 3, to 5 and name another competent authority than the one named in para. 1 for conducting supervision on a consolidated basis or supervision of compliance with the group capital test, provided that the application of such criteria would not be appropriate for the effective supervision on a consolidated basis or the supervision of compliance with the group capital test. In those cases, competent authorities shall, before adopting any such decision, give the EU parent investment holding company or the EU parent mixed financial holding company or investment firm with the largest balance sheet total an opportunity to state its opinion on that intended decision. The FMA and the competent authorities of the other relevant Member States shall notify the European Commission and EBA of any such decision.	<a href="#">§ 38 WPFG</a>	N	
090		1(2)(c)	Competent authority	Application of Capital Requirements Regulation (Regulation (EU) No 575/2013) requirements	Competent authority may decide to apply Regulation (EU) No 575/2013 requirements for investment firms which carry out activities specified in points 3 and 6 in Section A of Annex I of Directive 2014/65/EU and for which the value of total consolidated assets of the investment firm or group of investment firms is equal to or exceeds EUR 15 000 000 000 in accordance with Article 1(2) of Regulation (EU) 2019/2033.	Y	<b>Article 4 para. 1 WPFG:</b> (1) The FMA may order that an investment firm which trades for its own account pursuant to Article 1 no. 3 lit. c WAG 2018 or underwrites financial instruments and/or places financial instruments with a firm commitment basis pursuant to Article 1 no. 3 lit. f WAG 2018, and whose total assets are or exceed EUR 5 billion, shall apply the provisions of Regulation (EU) No 575/2013, if the investment firm: 1. conducts the listed activities to such an extent that the failure or failure or the distress of the investment firm could lead to systemic risk, or 2. is a clearing member pursuant to point 3 of Article 4 (1) of Regulation (EU) 2019/2033; 3. has, based on its size, its interconnectedness with the financial system, the nature, scope and complexity of its activities or the activities that it provides on a cross-border basis, significant relevance for the economy of the European Union or Austria.	<a href="#">§ 4 WPFG</a>	N	

EN - Annex II

	Directive (EU) 2019/2034	Regulation (EU) 2019/2033	Addressee	Denomination	Description of the option or discretion	Exercised (Y/N/NA) <sup>(1)</sup>	National text <sup>(2)</sup>	Reference(s) <sup>(3)</sup>	Available in EN (Y/N)	Details / Comments
100		1(5)	Competent authority	Application of Regulation (EU) No 575/2013 requirements	Competent authorities may allow Regulation (EU) No 575/2013 requirements to be applied to investment firms which carry out activities specified in points 3 and 6 in Section A of Annex I of Directive 2014/65/EU and if the investment firm is a subsidiary of a credit institution or financial holding company or a mixed financial holding company in accordance with Article 1(5) of Regulation (EU) 2019/2033.	N				
110		6(1)	Competent authority	Application of requirements on an individual basis	Competent authorities may exempt an investment firm from the application of Article 5 of Regulation (EU) 2019/2033 in respect of parts 2, 3, 4, 6 and 7, where all conditions of Article 6(1) are fulfilled.	Y	<b>Article 37 WPFG:</b> The FMA may exempt small and non-interconnected investment firms pursuant to Article 12 (1) of Regulation (EU) 2019/2033 from the application of Parts Two (own funds), Three (capital requirements), 4 (concentration risk), 6 (disclosure) and 7 (reporting) of Regulation (EU) 2019/2033 by means of a Regulation under the conditions set forth in Article 6 (1) or (2) of Regulation (EU) 2019/2033, when it is both the competent authority and the consolidating authority for the investment firms.	<a href="#">§ 37 WPFG</a>	N	
120		6(2)	Competent authority	Application of requirements on an individual basis	Competent authorities may exempt an investment firm from the application of Article 5 of Regulation (EU) 2019/2033 in respect of part 6, where all conditions of Article 6(2) are fulfilled.	Y	<b>Article 37 WPFG:</b> The FMA may exempt small and non-interconnected investment firms pursuant to Article 12 (1) of Regulation (EU) 2019/2033 from the application of Parts Two (own funds), Three (capital requirements), 4 (concentration risk), 6 (disclosure) and 7 (reporting) of Regulation (EU) 2019/2033 by means of a Regulation under the conditions set forth in Article 6 (1) or (2) of Regulation (EU) 2019/2033, when it is both the competent authority and the consolidating authority for the investment firms.	<a href="#">§ 37 WPFG</a>	N	
130		6(3)	Competent authority	Application of requirements on an individual basis	Competent authorities may exempt an investment firm from the application of Article 5 of the Regulation (EU) 2019/2033 in respect of part 5 where all conditions of Article 6(3) are fulfilled.	N				
140		7(4)	Competent authority	Application of requirements on a consolidated basis	Competent authorities may exempt the parent undertaking from requirements to comply with the obligation laid down in part 5 on the basis of their consolidated situation.	N				
150		8(1)	Competent authority	Application of requirements on a consolidated basis	Competent authorities may allow the application of Article 8 of Regulation (EU) 2019/2033 where group structures are sufficiently simple, there are no significant risks to clients or to the market from the investment firm group as a whole that would otherwise require supervision on a consolidated basis.	Y	<b>Article 36 para. 1 WPFG</b> (1) Where an application is made to apply the group capital test pursuant to Article 8 of Regulation (EU) 2019/2033, the conditions of a sufficiently simple group structure and the absence of significant risks to clients or the market stemming from the investment firm group as a whole shall be considered to be met, if the applicant is able to prove to the FMA that the following circumstances apply: 1. The group is founded solely on capital-based relationships between its members that exist on the basis of Common Equity Tier 1 instruments pursuant to Article 28 of Regulation (EU) No 575/2013; 2. The K-factors assets under management (AUM), client orders handled (COH), assets safeguarded and administered (ASA), client money held (CMH), net position risk (NPR) and clearing margin given (CMG) pursuant to Article 4 (1) points 27 to 30, 32 and 34 of Regulation (EU) 2019/2033 of all group members do not respectively amount to more than five times the threshold values pursuant to Article 12 (1) of Regulation (EU) 2019/2033; 3. No member of the group conducts trading for its own account (Article 1 no. 3 lit. c WAG 2018) or the underwriting of the issuance of financial instruments or placement of financial instruments with a firm commitment basis(Article 1 no. 3 lit. f WAG 2018) or is authorised pursuant to point a of Article 3 (1) of Directive 2014/65/EU to hold client funds or client securities.	<a href="#">§ 36 WPFG</a>	N	
160		8(4)	Competent authority	Application of requirements on a consolidated basis	Competent authorities may allow a parent to hold a lower amount of own funds than the amount calculated under Article 8(3) of Regulation (EU) 2019/2033, provided that this amount is not 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.	N				
170		9(4)	Competent authority	Own funds	Competent authorities may allow for investment firms which are small and non-interconnected or not legal persons or joint-stock companies to use further instruments or funds as equivalent to own funds instruments	N				

EN - Annex II

	Directive (EU) 2019/2034	Regulation (EU) 2019/2033	Addressee	Denomination	Description of the option or discretion	Exercised (Y/N/NA) <sup>(1)</sup>	National text <sup>(2)</sup>	Reference(s) <sup>(3)</sup>	Available in EN (Y/N)	Details / Comments
180		10(2)	Competent authority	Qualifying holdings of own funds	Competent authorities may prohibit an investment firm from having qualifying holdings as referred to in Article 10(1) of Regulation (EU) 2019/2033, where the amount of those holdings exceeds the percentages of own funds laid down in that paragraph.	N				
190		11(3)	Competent authority	Own funds	Competent authorities may require an investment firm to be subject to different own funds requirements than the ones referred to in Article 11 of the Regulation (EU) 2019/2033	N				
200		13(2)	Competent authority	Own funds. Fixed overheads requirement	Competent authorities may adjust the amount of fixed overheads requirement as referred in Article 13(1) of Regulation (EU) 2019/2033 when it considers that there has been a material change in the activities of an investment firm.	N				
210		15(4)	Competent authority	Own funds	Competent authorities may adjust the corresponding amount of a relevant K-factor when they consider that there has been a material change in the business activity of the investment firm.	N				
220		17(2)	Competent authority	K-factors. K-AUM (assets under management)	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.	N				
230		18(2)	Competent authority	K-factors. K-CMH (client money held)	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.	N				
240		19(3)	Competent authority	K-factors. K-ASA (assets safeguarded and administered)	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.	N				
250		20(3)	Competent authority	K-factors. K-COH (client orders handled)	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.	N				
260		30(1)	Competent authority	K-factors. K-TCD	Competent authorities may change the volatility adjustment for certain types of commodities for which there are different levels of volatility in prices.	N				
270		33(4)	Competent authority	K-factors. K-DTF (daily trading flow)	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.	N				
280		38(2)	Competent authority	Concentration risk	Competent authorities may grant the investment firm a limited period to comply with the limit regarding to concentration risk and exposure value excess referred in Article 37 of Regulation (EU) 2019/2033.	N				
290		41(2)	Competent authority	Concentration risk	Competent authorities may fully or partially exempt exposures referred to in Article 41(2) of Regulation (EU) 2019/2033 from the application of Article 37 of Regulation (EU) 2019/2033.	N				
300		43(1)	Competent authority	Liquidity requirements	Competent authorities may exempt small and non-interconnected investment firms from application of liquidity requirements set out in Article 43(1) of Regulation (EU) 2019/2033.	Y	<b>Article 32 WPGF:</b> Irrespective of its power to grant exemptions pursuant to Article 43 (2) subpara. 2 of Regulation (EU) 2019/2033 by means on an administrative decision on a case-by-case basis, the FMA, taking into action the European practices in this area, may exclude small and non-interconnected investment firms pursuant to Article 12 (1) of Regulation (EU) 2019/2033 with regard to the nature, scope, risk profile and complexity of their business as well as investor protection from the application of Article 43 (1) subpara. 2 of Regulation (EU) 2019/2033 by means of a Regulation.	<a href="#">§ 32 WPGF</a>	N	