

Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (Text with EEA relevance)

PART TEN

**TRANSITIONAL PROVISIONS, REPORTS, REVIEWS AND AMENDMENTS**

TITLE I

**TRANSITIONAL PROVISIONS**

*CHAPTER 2*

***Grandfathering of capital instruments***

*Section 1*

***Instruments constituting State aid***

*Article 483*

**Grandfathering of State aid instruments**

1 By way of derogation from Articles 26 to 29, 51, 52, 62 and 63 during the period from 1 January 2014 to 31 December 2017, this Article applies to capital instruments and items where the following conditions are met:

- a the instruments were issued prior to 1 January 2014;
- b the instruments were issued within the context of recapitalisation measures pursuant to State aid rules. Insofar as part of the instruments are privately subscribed, they must be issued prior to 30 June 2012 and in conjunction with those parts that are subscribed by the Member State;
- c the instruments were considered compatible with the internal market by the Commission under Article 107 TFEU;
- d in cases where the instruments are subscribed by both the Member State and private investors, where there is a partial redemption of the instruments subscribed by the Member State, a corresponding share of the privately subscribed part of the instruments shall be grandfathered in accordance with Article 484. When all the instruments subscribed by the Member State have been redeemed, the remaining instruments subscribed by private investors shall be grandfathered in accordance with Article 484.

2 Instruments that qualified in accordance with the national transposition measures for point (a) of Article 57 of Directive 2006/48/EC shall qualify as Common Equity Tier 1 instruments notwithstanding either of the following:

- a the conditions laid down in Article 28 of this Regulation are not met;

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- b the instruments were issued by an undertaking referred to in Article 27 of this Regulation and the conditions laid down in Article 28 of this Regulation or, where applicable, Article 29 of this Regulation are not met.

3 Instruments referred to in point (c) of paragraph 1 of this Article that do not qualify under national transposition measures for point (a) of Article 57 of Directive 2006/48/EC shall qualify as Common Equity Tier 1 instruments notwithstanding the requirements of point (a) or (b) of paragraph 2 of this Article not being met, provided that the requirements of paragraph 8 of this Article are met.

Instruments that qualify as Common Equity Tier 1 pursuant to the first subparagraph may not qualify as Additional Tier 1 instruments or Tier 2 instruments under paragraph 5 or 7.

4 Instruments that qualified in accordance with the national transposition measures for point (ca) of Article 57 and for Article 66(1) of Directive 2006/48/EC shall qualify as Additional Tier 1 instruments notwithstanding the conditions laid down in Article 52(1) of this Regulation not being met.

5 Instruments referred to in point (c) of paragraph 1 of this Article that do not qualify under the national transposition measures for point (ca) of Article 57 of Directive 2006/48/EC shall qualify as Additional Tier 1 instruments notwithstanding the conditions laid down in Article 52(1) of this Regulation not being met, provided that the requirements of paragraph 8 of this Article are met.

Instruments that qualify as Additional Tier 1 instruments pursuant to the first subparagraph may not qualify as Common Equity Tier 1 instruments or Tier 2 instruments under paragraph 3 or 7.

6 Items that qualified in accordance with national transposition measures for points (f), (g) or (h) of Article 57 and for Article 66(1) of Directive 2006/48/EC shall qualify as Tier 2 instruments notwithstanding the items not being referred to in Article 62 of this Regulation or the conditions laid down in Article 63 of this Regulation not being met.

7 Instruments referred to in point (c) of paragraph 1 of this Article that do not qualify under the national transposition measures for point (f), (g) or (h) of Article 57 and for Article 66(1) of Directive 2006/48/EC shall qualify as Tier 2 instruments notwithstanding the items not being referred to in Article 62 of this Regulation or the conditions laid down in Article 63 of this Regulation not being met, provided the conditions in paragraph 8 of this Article are met.

Instruments that qualify as Tier 2 instruments pursuant to the first subparagraph may not qualify as Common Equity Tier 1 instruments or Additional Tier 1 instruments under paragraph 3 or 5.

8 Instruments referred to paragraphs 3, 5 and 7 may qualify as own funds instruments referred to in those paragraphs only where the condition in point (a) of paragraph 1 is met and where they are issued by institutions that are incorporated in a Member State that is subject to an Economic Adjustment Programme, and the issuance of those instruments is agreed or eligible under that programme.

## Section 2

### ***Instruments not constituting state aid***

#### *Sub-Section 1*

### ***Grandfathering eligibility and limits***

#### *Article 484*

#### **Eligibility for grandfathering of items that qualified as own funds under national transposition measures for Directive 2006/48/EC**

1 This Article shall apply only to instruments and items that were issued or were eligible as own funds prior to 31 December 2011 and are not those referred to in Article 483(1).

2 By way of derogation from Articles 26 to 29, 51, 52, 62 and 63, this Article shall apply during the period from 1 January 2014 to 31 December 2021.

3 Subject to Article 485 of this Regulation and to the limit specified in Article 486(2) thereof, capital within the meaning of Article 22 of Directive 86/635/EEC, and the related share premium accounts, that qualified as original own funds under the national transposition measures for point (a) of Article 57 of Directive 2006/48/EC shall qualify as Common Equity Tier 1 items notwithstanding that capital not meeting the conditions laid down in Article 28 or, where applicable, Article 29 of this Regulation.

4 Subject to the limit specified Article 486(3) of this Regulation, instruments, and the related share premium accounts, that qualified as original own funds under national transposition measures for point (ca) of Article 57 and Article 154(8) and (9) of Directive 2006/48/EC shall qualify as Additional Tier 1 items, notwithstanding the conditions laid down in Article 52 of this Regulation not being met.

5 Subject to the limits specified in Article 486(4) of this Regulation, items, and the related share premium accounts, that qualified under national transposition measures for points (e), (f), (g) or (h) of Article 57 of Directive 2006/48/EC shall qualify as Tier 2 items, notwithstanding those items not being included in Article 62 of this Regulation or the conditions laid down in Article 63 of this Regulation not being met.

#### *Article 485*

#### **Eligibility for inclusion in the Common Equity Tier 1 of share premium accounts related to items that qualified as own funds under national transposition measures for Directive 2006/48/EC**

1 This Article shall apply only to instruments that were issued prior to 31 December 2010 and are not those referred to in Article 483(1).

2 Share premium accounts related to capital within the meaning of Article 22 of Directive 86/635/EEC, that qualified as original own funds under the national transposition measures for point (a) of Article 57 of Directive 2006/48/EC shall qualify as Common Equity Tier 1 items if they meet the conditions laid down in points (i) and (j) of Article 28 of this Regulation.

*Article 486*

**Limits for grandfathering of items within Common  
Equity Tier 1, Additional Tier 1 and Tier 2 items**

1 During the period from 1 January 2014 to 31 December 2021, the extent to which instruments and items referred to in Article 484 shall qualify as own funds shall be limited in accordance with this Article.

2 The amount of items referred to in Article 484(3) that shall qualify as Common Equity Tier 1 items is limited to the applicable percentage of the sum of the amounts specified in points (a) and (b) of this paragraph:

- a the nominal amount of capital referred to in Article 484(3) that were in issue on 31 December 2012;
- b the share premium accounts related to the items referred to in point (a).

3 The amount of items referred to in Article 484(4) that shall qualify as Additional Tier 1 items is limited to the applicable percentage multiplied by the result of subtracting from the sum of the amounts specified in points (a) and (b) of this paragraph the sum of the amounts specified in points (c) to (f) of this paragraph:

- a the nominal amount of instruments referred to in Article 484(4), that remained in issue on 31 December 2012;
- b the share premium accounts related to the instruments referred to in point (a);
- c the amount of instruments referred to in Article 484(4) which on 31 December 2012 exceeded the limits specified in the national transposition measures for point (a) of Article 66(1) and Article 66(1a) of Directive 2006/48/EC;
- d the share premium accounts related to the instruments referred to in point (c);
- e the nominal amount of instruments referred to Article 484(4) that were in issue on 31 December 2012 but do not qualify as Additional Tier 1 instruments pursuant to Article 489(4);
- f the share premium accounts related to the instruments referred to in point (e).

4 The amount of items referred to in Article 484(5) that shall qualify as Tier 2 items is limited to the applicable percentage of the result of subtracting from the sum of the amounts specified in points (a) to (d) of this paragraph the sum of amounts specified in points (e) to (h) of this paragraph:

- a the nominal amount of instruments referred to in Article 484(5) that remained in issue on 31 December 2012;
- b the share premium accounts related to the instruments referred to in point (a);
- c the nominal amount of subordinated loan capital that remained in issue on 31 December, reduced by the amount required pursuant to national transposition measures for point (c) of Article 64(3) of Directive 2006/48/EC;
- d the nominal amount of items referred to in Article 484(5), other than the instruments and subordinated loan capital referred to in points (a) and (c) of this paragraph, that were in issue on 31 December 2012;
- e the nominal amount of instruments and items referred to in Article 484(5) that were in issue on 31 December 2012 that exceeded the limits specified in the national transposition measures for point (a) of Article 66(1) of Directive 2006/48/EC;
- f the share premium accounts related to the instruments referred to in point (e);

- g the nominal amount of instruments referred to in Article 484(5) that were in issue on 31 December 2012 that do not qualify as Tier 2 items pursuant to Article 490(4);
- h the share premium accounts related to the instruments referred to in point (g).

5 For the purposes of this Article, the applicable percentages referred to in paragraphs 2 to 4 shall fall within the following ranges:

- a 60 % to 80 % during the period from 1 January 2014 to 31 December 2014;
- b 40 % to 70 % during the period from 1 January 2015 to 31 December 2015;
- c 20 % to 60 % during the period from 1 January 2016 to 31 December 2016;
- d 0 % to 50 % during the period from 1 January 2017 to 31 December 2017;
- e 0 % to 40 % during the period from 1 January 2018 to 31 December 2018;
- f 0 % to 30 % during the period from 1 January 2019 to 31 December 2019;
- g 0 % to 20 % during the period from 1 January 2020 to 31 December 2020;
- h 0 % to 10 % during the period from 1 January 2021 to 31 December 2021.

6 Competent authorities shall determine and publish the applicable percentages in the ranges specified in paragraph 5.

#### *Article 487*

##### **Items excluded from grandfathering in Common Equity Tier 1 or Additional Tier 1 items in other elements of own funds**

1 By way of derogation from Articles 51, 52, 62 and 63, during the period from 1 January 2014 to 31 December 2021, institutions may treat as items referred to in Article 484(4), capital, and the related share premium accounts, referred to in Article 484(3) that are excluded from Common Equity Tier 1 items because they exceed the applicable percentage specified in Article 486(2), to the extent that the inclusion of that capital and the related share premium accounts, does not exceed the applicable percentage limit referred to in Article 486(3).

2 By way of derogation from Articles 51, 52, 62 and 63, during the period from 1 January 2014 to 31 December 2021, institutions may treat the following as items referred to in Article 484(5), to the extent that their inclusion does not exceed the applicable percentage limit referred to in Article 486(4):

- a capital, and the related share premium accounts, referred to in Article 484(3) that are excluded from Common Equity Tier 1 items because they exceed the applicable percentage specified in Article 486(2);
- b instruments, and the related share premium accounts, referred to in Article 484(4) that exceed the applicable percentage referred to in Article 486(3).

3 EBA shall develop draft regulatory technical standards to specify the conditions for treating own funds instruments referred to in paragraphs 1 and 2 as falling under Article 486(4) or (5) during the period from 1 January 2014 to 31 December 2021.

EBA shall submit those draft regulatory technical standards to the Commission by 1 February 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

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### *Article 488*

#### **Amortisation of items grandfathered as Tier 2 items**

The items referred to in Article 484(5) that qualify as Tier 2 items referred to in Article 484(5) or Article 486(4) shall be subject to the requirements laid down in Article 64.

### *Sub-Section 2*

#### ***Inclusion of instruments with a call and incentive to redeem in Additional Tier 1 and Tier 2 items***

### *Article 489*

#### **Hybrid instruments with a call and incentive to redeem**

1 By way of derogation from Articles 51 and 52, during the period from 1 January 2014 to 31 December 2021, instruments referred to in Article 484(4) that include in their terms and conditions a call with an incentive for them to be redeemed by the institution shall be subject to the requirements laid down in paragraphs 2 to 7 of this Article.

2 The instruments shall qualify as Additional Tier 1 instruments provided the following conditions are met:

- a the institution was able to exercise a call with an incentive to redeem only prior to 1 January 2013;
- b the institution did not exercise the call;
- c the conditions laid down in Article 52 are met from 1 January 2013.

3 The instruments shall qualify as Additional Tier 1 instruments with their recognition reduced in accordance with Article 484(4) until the date of their effective maturity and thereafter shall qualify as Additional Tier 1 items without limit provided:

- a the institution was able to exercise a call with an incentive to redeem only on or after 1 January 2013;
- b the institution did not exercise the call on the date of the effective maturity of the instruments;
- c the conditions laid down in Article 52 are met from the date of the effective maturity of the instruments.

4 The instruments shall not qualify as Additional Tier 1 instruments, and shall not be subject to Article 484(4), from 1 January 2014 where the following conditions are met:

- a the institution was able to exercise a call with an incentive to redeem between 31 December 2011 and 1 January 2013;
- b the institution did not exercise the call on the date of the effective maturity of the instruments;
- c the conditions laid down in Article 52 are not met from the date of the effective maturity of the instruments.

5 The instruments shall qualify as Additional Tier 1 instruments with their recognition reduced in accordance with Article 484(4) until the date of their effective maturity, and shall not qualify as Additional Tier 1 instruments thereafter, where the following conditions are met:

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- a the institution was able to exercise a call with an incentive to redeem on or after 1 January 2013;
- b the institution did not exercise the call on the date of the effective maturity of the instruments;
- c the conditions laid down in Article 52 are not met from the date of the effective maturity of the instruments.

6 The instruments shall qualify as Additional Tier 1 instruments in accordance with Article 484(4) where the following conditions are met:

- a the institution was able to exercise a call with an incentive to redeem only prior to or on 31 December 2011;
- b the institution did not exercise the call on the date of the effective maturity of the instruments;
- c the conditions laid down in Article 52 were not met from the date of the effective maturity of the instruments.

#### *Article 490*

#### **Tier 2 items with an incentive to redeem**

1 By way of derogation from Articles 62 and 63, during the period from 1 January 2014 to 31 December 2021, items referred to in Article 484(5) that qualified under the national transposition measures for point (f) or (h) of Article 57 of Directive 2006/48/EC and include in their terms and conditions a call with an incentive for them to be redeemed by the institution shall be subject to the requirements laid down in paragraphs 2 to 7 of this Article.

2 The items shall qualify as Tier 2 instruments provided:

- a the institution was able to exercise a call with an incentive to redeem only prior to 1 January 2013;
- b the institution did not exercise the call;
- c from 1 January 2013 the conditions laid down in Article 63 are met.

3 The items shall qualify as Tier 2 items in accordance with Article 484(5) until the date of their effective maturity, and shall qualify thereafter as Tier 2 items without limit, provided the following conditions are met:

- a the institution was able to exercise a call with an incentive to redeem only on or after 1 January 2013;
- b the institution did not exercise the call on the date of the effective maturity of the items;
- c the conditions laid down in Article 63 are met from the date of the effective maturity of the items.

4 The items shall not qualify as Tier 2 items from 1 January 2013 where the following conditions are met:

- a the institution was able to exercise a call with an incentive to redeem only between 31 December 2011 and 1 January 2013;
- b the institution did not exercise the call on the date of the effective maturity of the items;
- c the conditions laid down in Article 63 are not met from the date of the effective maturity of the items.

5 The items shall qualify as Tier 2 items with their recognition reduced in accordance with Article 484(5) until the date of their effective maturity, and shall not qualify as Tier 2 items thereafter, where:

- a the institution was able to exercise a call with an incentive to redeem on or after 1 January 2013;
  - b the institution did not exercise the call on the date of their effective maturity;
  - c the conditions set out in Article 63 are not met from the date of effective maturity of the items.
- 6 The items shall qualify as Tier 2 items in accordance with Article 484(5) where:
- a the institution was able to exercise a call with an incentive to redeem only prior to or on 31 December 2011;
  - b the institution did not exercise the call on the date of the effective maturity of the items;
  - c the conditions laid down in Article 63 are not met from the date of the effective maturity of the items.

#### *Article 491*

#### **Effective maturity**

For the purposes of Articles 489 and 490, effective maturity shall be determined as follows:

- (a) for the items referred to in paragraphs 3 and 5 of those Articles, it is the date of the first call with an incentive to redeem occurring on or after 1 January 2013;
- (b) for the items referred to in paragraph 4 of those Articles, it is the date of the first call with an incentive to redeem occurring between 31 December 2011 and 1 January 2013;
- (c) for the items referred to in paragraph 6 of those Articles, it is the date of the first call with an incentive to redeem prior to 31 December 2011.