

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)

[^{X1}PART TWO

[^{F1}OWN FUNDS AND ELIGIBLE LIABILITIES]

TITLE I

ELEMENTS OF OWN FUNDS

[^{X1}CHAPTER 2

Common Equity Tier 1 capital

Section 1

Common Equity Tier 1 items and instruments

Article 26

Common Equity Tier 1 items

- 1 Common Equity Tier 1 items of institutions consist of the following:
- a capital instruments, provided that the conditions laid down in Article 28 or, where applicable, Article 29 are met;
 - b share premium accounts related to the instruments referred to in point (a);
 - c retained earnings;
 - d accumulated other comprehensive income;
 - e other reserves;
 - f funds for general banking risk.

The items referred to in points (c) to (f) shall be recognised as Common Equity Tier 1 only where they are available to the institution for unrestricted and immediate use to cover risks or losses as soon as these occur.

2 For the purposes of point (c) of paragraph 1, institutions may include interim or year-end profits in Common Equity Tier 1 capital before the institution has taken a formal decision confirming the final profit or loss of the institution for the year only with the prior permission of the competent authority. The competent authority shall grant permission where the following conditions are met:

- a those profits have been verified by persons independent of the institution that are responsible for the auditing of the accounts of that institution;
- b the institution has demonstrated to the satisfaction of the competent authority that any foreseeable charge or dividend has been deducted from the amount of those profits.

Status: Point in time view as at 27/06/2019.

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A verification of the interim or year-end profits of the institution shall provide an adequate level of assurance that those profits have been evaluated in accordance with the principles set out in the applicable accounting framework.

[^{F13} Competent authorities shall evaluate whether issuances of capital instruments meet the criteria set out in Article 28 or, where applicable, Article 29. Institutions shall classify issuances of capital instruments as Common Equity Tier 1 instruments only after permission is granted by the competent authorities.

By way of derogation from the first subparagraph, institutions may classify as Common Equity Tier 1 instruments subsequent issuances of a form of Common Equity Tier 1 instruments for which they have already received that permission, provided that both of the following conditions are met:

- a the provisions governing those subsequent issuances are substantially the same as the provisions governing those issuances for which the institutions have already received permission;
- b institutions have notified those subsequent issuances to the competent authorities sufficiently in advance of their classification as Common Equity Tier 1 instruments.

Competent authorities shall consult EBA before granting permission for new forms of capital instruments to be classified as Common Equity Tier 1 instruments. Competent authorities shall have due regard to EBA's opinion and, where they decide to deviate from it, shall write to EBA within three months from the date of receipt of EBA's opinion setting out the rationale for deviating from the relevant opinion. This subparagraph does not apply to the capital instruments referred to in Article 31.

On the basis of information collected from competent authorities, EBA shall establish, maintain and publish a list of all forms of capital instruments in each Member State that qualify as Common Equity Tier 1 instruments. In accordance with Article 35 of Regulation (EU) No 1093/2010, EBA may collect any information in connection with Common Equity Tier 1 instruments that it considers necessary to establish compliance with the criteria set out in Article 28 or, where applicable, Article 29 of this Regulation and for the purpose of maintaining and updating the list referred to in this subparagraph.

Following the review process set out in Article 80 and where there is sufficient evidence that the relevant capital instruments do not meet or have ceased to meet the criteria set out in Article 28 or, where applicable, Article 29, EBA may decide not to add those instruments to the list referred to in the fourth subparagraph or remove them from that list, as the case may be. EBA shall make an announcement to that effect that shall also refer to the relevant competent authority's position on the matter. This subparagraph does not apply to the capital instruments referred to in Article 31.]

4 EBA shall develop draft regulatory technical standards to specify the meaning of foreseeable when determining whether any foreseeable charge or dividend has been deducted.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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.

Status: Point in time view as at 27/06/2019.

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Textual Amendments

- F1** Substituted by Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (Text with EEA relevance).

Article 27

Capital instruments of mutuals, cooperative societies, savings institutions or similar institutions in Common Equity Tier 1 items

1 Common Equity Tier 1 items shall include any capital instrument issued by an institution under its statutory terms provided that the following conditions are met:

- a the institution is of a type that is defined under applicable national law and which competent authorities consider to qualify as any of the following:
 - (i) a mutual;
 - (ii) a cooperative society;
 - (iii) a savings institution;
 - (iv) a similar institution;
 - (v) a credit institution which is wholly owned by one of the institutions referred to in points (i) to (iv) and has approval from the relevant competent authority to make use of the provisions in this Article, provided that, and for as long as, 100 % of the ordinary shares in issue in the credit institution are held directly or indirectly by an institution referred to in those points;
- b the conditions laid down in Articles 28 or, where applicable, Article 29, are met.

Those mutuals, cooperative societies or savings institutions recognised as such under applicable national law prior to 31 December 2012 shall continue to be classified as such for the purposes of this Part, provided that they continue to meet the criteria that determined such recognition.

2 EBA shall develop draft regulatory technical standards to specify the conditions according to which competent authorities may determine that a type of undertaking recognised under applicable national law qualifies as a mutual, cooperative society, savings institution or similar institution for the purposes of this Part.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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 28

Common Equity Tier 1 instruments

1 Capital instruments shall qualify as Common Equity Tier 1 instruments only if all the following conditions are met:

a the instruments are issued directly by the institution with the prior approval of the owners of the institution or, where permitted under applicable national law, the management body of the institution;

[^{F1}b the instruments are fully paid up and the acquisition of ownership of those instruments is not funded directly or indirectly by the institution;]

c the instruments meet all the following conditions as regards their classification:

(i) they qualify as capital within the meaning of Article 22 of Directive 86/635/EEC;

(ii) they are classified as equity within the meaning of the applicable accounting framework;

(iii) they are classified as equity capital for the purposes of determining balance sheet insolvency, where applicable under national insolvency law;

d the instruments are clearly and separately disclosed on the balance sheet in the financial statements of the institution;

e the instruments are perpetual;

f the principal amount of the instruments may not be reduced or repaid, except in either of the following cases:

(i) the liquidation of the institution;

(ii) discretionary repurchases of the instruments or other discretionary means of reducing capital, where the institution has received the prior permission of the competent authority in accordance with Article 77;

g the provisions governing the instruments do not indicate expressly or implicitly that the principal amount of the instruments would or might be reduced or repaid other than in the liquidation of the institution, and the institution does not otherwise provide such an indication prior to or at issuance of the instruments, except in the case of instruments referred to in Article 27 where the refusal by the institution to redeem such instruments is prohibited under applicable national law;

h the instruments meet the following conditions as regards distributions:

(i) there is no preferential distribution treatment regarding the order of distribution payments, including in relation to other Common Equity Tier 1 instruments, and the terms governing the instruments do not provide preferential rights to payment of distributions;

(ii) distributions to holders of the instruments may be paid only out of distributable items;

(iii) the conditions governing the instruments do not include a cap or other restriction on the maximum level of distributions, except in the case of the instruments referred to in Article 27;

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- (iv) the level of distributions is not determined on the basis of the amount for which the instruments were purchased at issuance, except in the case of the instruments referred to in Article 27;
- (v) the conditions governing the instruments do not include any obligation for the institution to make distributions to their holders and the institution is not otherwise subject to such an obligation;
- (vi) non-payment of distributions does not constitute an event of default of the institution;
- (vii) the cancellation of distributions imposes no restrictions on the institution;
- i compared to all the capital instruments issued by the institution, the instruments absorb the first and proportionately greatest share of losses as they occur, and each instrument absorbs losses to the same degree as all other Common Equity Tier 1 instruments;
- j the instruments rank below all other claims in the event of insolvency or liquidation of the institution;
- k the instruments entitle their owners to a claim on the residual assets of the institution, which, in the event of its liquidation and after the payment of all senior claims, is proportionate to the amount of such instruments issued and is not fixed or subject to a cap, except in the case of the capital instruments referred to in Article 27;
- l the instruments are neither secured nor subject to a guarantee that enhances the seniority of the claim by any of the following:
 - (i) the institution or its subsidiaries;
 - (ii) the parent undertaking of the institution or its subsidiaries;
 - (iii) the parent financial holding company or its subsidiaries;
 - (iv) the mixed activity holding company or its subsidiaries;
 - (v) the mixed financial holding company and its subsidiaries;
 - (vi) any undertaking that has close links with the entities referred to in points (i) to (v);
- m the instruments are not subject to any arrangement, contractual or otherwise, that enhances the seniority of claims under the instruments in insolvency or liquidation.

The condition set out in point (j) of the first subparagraph shall be deemed to be met, notwithstanding the instruments are included in Additional Tier 1 or Tier 2 by virtue of Article 484(3), provided that they rank *pari passu*.

[^{F2}For the purposes of point (b) of the first subparagraph, only the part of a capital instrument that is fully paid up shall be eligible to qualify as a Common Equity Tier 1 instrument.]

2 The conditions laid down in point (i) of paragraph 1 shall be deemed to be met notwithstanding a write down on a permanent basis of the principal amount of Additional Tier 1 or Tier 2 instruments.

The condition laid down in point (f) of paragraph 1 shall be deemed to be met notwithstanding the reduction of the principal amount of the capital instrument within a resolution procedure or as a consequence of a write down of capital instruments required by the resolution authority responsible for the institution.

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The condition laid down in point (g) of paragraph 1 shall be deemed to be met notwithstanding the provisions governing the capital instrument indicating expressly or implicitly that the principal amount of the instrument would or might be reduced within a resolution procedure or as a consequence of a write down of capital instruments required by the resolution authority responsible for the institution.

3 The condition laid down in point (h)(iii) of paragraph 1 shall be deemed to be met notwithstanding the instrument paying a dividend multiple, provided that such a dividend multiple does not result in a distribution that causes a disproportionate drag on own funds.

[^{F2}The condition set out in point (h)(v) of the first subparagraph of paragraph 1 shall be considered to be met notwithstanding a subsidiary being subject to a profit and loss transfer agreement with its parent undertaking, according to which the subsidiary is obliged to transfer, following the preparation of its annual financial statements, its annual result to the parent undertaking, where all the following conditions are met:

- a the parent undertaking owns 90 % or more of the voting rights and capital of the subsidiary;
- b the parent undertaking and the subsidiary are located in the same Member State;
- c the agreement was concluded for legitimate taxation purposes;
- d in preparing the annual financial statement, the subsidiary has discretion to decrease the amount of distributions by allocating a part or all of its profits to its own reserves or funds for general banking risk before making any payment to its parent undertaking;
- e the parent undertaking is obliged under the agreement to fully compensate the subsidiary for all losses of the subsidiary;
- f the agreement is subject to a notice period according to which the agreement can be terminated only by the end of an accounting year, with such termination taking effect no earlier than the beginning of the following accounting year, leaving the parent undertaking's obligation to fully compensate the subsidiary for all losses incurred during the current accounting year unchanged.

Where an institution has entered into a profit and loss transfer agreement, it shall notify the competent authority without delay and provide the competent authority with a copy of the agreement. The institution shall also notify the competent authority without delay of any changes to the profit and loss transfer agreement and the termination thereof. An institution shall not enter into more than one profit and loss transfer agreement.]

4 For the purposes of point (h)(i) of paragraph 1, differentiated distributions shall only reflect differentiated voting rights. In this respect, higher distributions shall only apply to Common Equity Tier 1 instruments with fewer or no voting rights.

5 EBA shall develop draft regulatory technical standards to specify the following:

- a the applicable forms and nature of indirect funding of own funds instruments;
- b whether and when multiple distributions would constitute a disproportionate drag on own funds;
- c the meaning of preferential distributions.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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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Textual Amendments

- F2** Inserted by Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (Text with EEA relevance).

Article 29

Capital instruments issued by mutuals, cooperative societies, savings institutions and similar institutions

1 Capital instruments issued by mutuals, cooperative societies, savings institutions and similar institutions shall qualify as Common Equity Tier 1 instruments only if the conditions laid down in Article 28 with modifications resulting from the application of this Article are met.

2 The following conditions shall be met as regards redemption of the capital instruments:

- except where prohibited under applicable national law, the institution shall be able to refuse the redemption of the instruments;
- where the refusal by the institution of the redemption of instruments is prohibited under applicable national law, the provisions governing the instruments shall give the institution the ability to limit their redemption;
- refusal to redeem the instruments, or the limitation of the redemption of the instruments where applicable, may not constitute an event of default of the institution.

3 The capital instruments may include a cap or restriction on the maximum level of distributions only where that cap or restriction is set out under applicable national law or the statute of the institution.

4 Where the capital instruments provide the owner with rights to the reserves of the institution in the event of insolvency or liquidation that are limited to the nominal value of the instruments, such a limitation shall apply to the same degree to the holders of all other Common Equity Tier 1 instruments issued by that institution.

The condition laid down in the first subparagraph is without prejudice to the possibility for a mutual, cooperative society, savings institution or a similar institution to recognise within Common Equity Tier 1 instruments that do not afford voting rights to the holder and that meet all the following conditions:

- the claim of the holders of the non-voting instruments in the insolvency or liquidation of the institution is proportionate to the share of the total Common Equity Tier 1 instruments that those non-voting instruments represent;
- the instruments otherwise qualify as Common Equity Tier 1 instruments.

5 Where the capital instruments entitle their owners to a claim on the assets of the institution in the event of its insolvency or liquidation that is fixed or subject to a cap, such a limitation shall apply to the same degree to all holders of all Common Equity Tier 1 instruments issued by the institution.

6 EBA shall develop draft regulatory technical standards to specify the nature of the limitations on redemption necessary where the refusal by the institution of the redemption of own funds instruments is prohibited under applicable national law.

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EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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.

Article 30

Consequences of the conditions for Common Equity Tier 1 instruments ceasing to be met

The following shall apply where, in the case of a Common Equity Tier 1 instrument, the conditions laid down in Article 28 or, where applicable, Article 29 cease to be met:

- (a) that instrument shall immediately cease to qualify as a Common Equity Tier 1 instrument;
- (b) the share premium accounts that relate to that instrument shall immediately cease to qualify as Common Equity Tier 1 items.

Article 31

Capital instruments subscribed by public authorities in emergency situations

1 In emergency situations, competent authorities may permit institutions to include in Common Equity Tier 1 capital instruments that comply at least with the conditions laid down in points (b) to (e) of Article 28(1) where all the following conditions are met:

- a the capital instruments are issued after 1 January 2014;
- b the capital instruments are considered State aid by the Commission;
- c the capital instruments are issued within the context of recapitalisation measures pursuant to State aid- rules existing at the time;
- d the capital instruments are fully subscribed and held by the State or a relevant public authority or public-owned entity;
- e the capital instruments are able to absorb losses;
- f except for the capital instruments referred to in Article 27, in the event of liquidation, the capital instruments entitle their owners to a claim on the residual assets of the institution after the payment of all senior claims;
- g there are adequate exit mechanisms of the State or, where applicable, a relevant public authority or public-owned entity;
- h the competent authority has granted its prior permission and has published its decision together with an explanation of that decision.

2 Upon reasoned request by, and in cooperation with, the relevant competent authority, EBA shall consider the capital instruments referred to in paragraph 1 as equivalent to Common Equity Tier 1 instruments for the purposes of this Regulation.

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Section 2

Prudential filters

Article 32

Securitised assets

1 An institution shall exclude from any element of own funds any increase in its equity under the applicable accounting framework that results from securitised assets, including the following:

- a such an increase associated with future margin income that results in a gain on sale for the institution;
- b where the institution is the originator of a securitisation, net gains that arise from the capitalisation of future income from the securitised assets that provide credit enhancement to positions in the securitisation.

2 EBA shall develop draft regulatory technical standards to specify further the concept of a gain on sale referred to in point (a) of paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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.

Article 33

Cash flow hedges and changes in the value of own liabilities

1 Institutions shall not include the following items in any element of own funds:

- a the fair value reserves related to gains or losses on cash flow hedges of financial instruments that are not valued at fair value, including projected cash flows;
- b gains or losses on liabilities of the institution that are valued at fair value that result from changes in the own credit standing of the institution;
- [^{F1}c fair value gains and losses on derivative liabilities of the institution that result from changes in the own credit risk of the institution.]

2 For the purposes of point (c) of paragraph 1, institutions shall not offset the fair value gains and losses arising from the institution's own credit risk with those arising from its counterparty credit risk.

3 Without prejudice to point (b) of paragraph 1, institutions may include the amount of gains and losses on their liabilities in own funds where all the following conditions are met:

- a the liabilities are in the form of bonds as referred to in Article 52(4) of Directive 2009/65/EC;
- b the changes in the value of the institution's assets and liabilities are due to the same changes in the institution's own credit standing;
- c there is a close correspondence between the value of the bonds referred to in point (a) and the value of the institution's assets;

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- d it is possible to redeem the mortgage loans by buying back the bonds financing the mortgage loans at market or nominal value.

4 EBA shall develop draft regulatory technical standards to specify what constitutes close correspondence between the value of the bonds and the value of the assets, as referred to in point (c) of paragraph 3.

EBA shall submit those draft regulatory technical standards to the Commission by 30 September 2013.

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.

Article 34

Additional value adjustments

Institutions shall apply the requirements of Article 105 to all their assets measured at fair value when calculating the amount of their own funds and shall deduct from Common Equity Tier 1 capital the amount of any additional value adjustments necessary.

Article 35

Unrealised gains and losses measured at fair value

Except in the case of the items referred to in Article 33, institutions shall not make adjustments to remove from their own funds unrealised gains or losses on their assets or liabilities measured at fair value.

Section 3

Deductions from Common Equity Tier 1 items, exemptions and alternatives

Sub-Section 1

Deductions from Common Equity Tier 1 items

Article 36

Deductions from Common Equity Tier 1 items

- 1 Institutions shall deduct the following from Common Equity Tier 1 items:
- a losses for the current financial year;
 - b intangible assets;
 - c deferred tax assets that rely on future profitability;
 - d for institutions calculating risk-weighted exposure amounts using the Internal Ratings Based Approach (the IRB Approach), negative amounts resulting from the calculation of expected loss amounts laid down in Articles 158 and 159;

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- e defined benefit pension fund assets on the balance sheet of the institution;
 - f direct, indirect and synthetic holdings by an institution of own Common Equity Tier 1 instruments, including own Common Equity Tier 1 instruments that an institution is under an actual or contingent obligation to purchase by virtue of an existing contractual obligation;
 - g direct, indirect and synthetic holdings of the Common Equity Tier 1 instruments of financial sector entities where those entities have a reciprocal cross holding with the institution that the competent authority considers to have been designed to inflate artificially the own funds of the institution;
 - h the applicable amount of direct, indirect and synthetic holdings by the institution of Common Equity Tier 1 instruments of financial sector entities where the institution does not have a significant investment in those entities;
 - i the applicable amount of direct, indirect and synthetic holdings by the institution of the Common Equity Tier 1 instruments of financial sector entities where the institution has a significant investment in those entities;
 - [^{X2}] the amount of items required to be deducted from Additional Tier 1 items pursuant to Article 56 that exceeds the Additional Tier 1 items of the institution;]
 - k the exposure amount of the following items which qualify for a risk weight of 1 250 %, where the institution deducts that exposure amount from the amount of Common Equity Tier 1 items as an alternative to applying a risk weight of 1 250 %:
 - (i) qualifying holdings outside the financial sector;
 - (ii) [^{F3}securitisation positions, in accordance with point (b) of Article 244(1), point (b) of Article 245(1) and Article 253;]
 - (iii) free deliveries, in accordance with Article 379(3);
 - (iv) positions in a basket for which an institution cannot determine the risk weight under the IRB Approach, in accordance with Article 153(8);
 - (v) equity exposures under an internal models approach, in accordance with Article 155(4).
 - l any tax charge relating to Common Equity Tier 1 items foreseeable at the moment of its calculation, except where the institution suitably adjusts the amount of Common Equity Tier 1 items insofar as such tax charges reduce the amount up to which those items may be used to cover risks or losses[^{F4};
 - [^{F5}m the applicable amount of insufficient coverage for non-performing exposures.]
- 2 EBA shall develop draft regulatory technical standards to specify the application of the deductions referred to in points (a), (c), (e), (f), (h), (i) and (l) of paragraph 1 of this Article and related deductions referred to in points (a), (c), (d) and (f) of Article 56 and points (a), (c) and (d) of Article 66.
- EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.
- 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.
- 3 EBA shall develop draft regulatory technical standards to specify the types of capital instruments of financial institutions and, in consultation with the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA) established by

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Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010⁽¹⁾, of third country insurance and reinsurance undertakings, and of undertakings excluded from the scope of Directive 2009/138/EC in accordance with Article 4 of that Directive that shall be deducted from the following elements of own funds:

- a Common Equity Tier 1 items;
- b Additional Tier 1 items;
- c Tier 2 items.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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.

^[F24] EBA shall develop draft regulatory technical standards to specify the application of the deductions referred to in point (b) of paragraph 1, including the materiality of negative effects on the value which do not cause prudential concerns.

EBA shall submit those draft regulatory technical standards to the Commission by 28 June 2020.

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

Editorial Information

- X2** Substituted by [Corrigendum to 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 \(Official Journal of the European Union L 176 of 27 June 2013\) \(Corrected version in Official Journal of the European Union L 321 of 30 November 2013\)](#).

Textual Amendments

- F2** Inserted by [Regulation \(EU\) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation \(EU\) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation \(EU\) No 648/2012 \(Text with EEA relevance\)](#).
- F3** Substituted by [Regulation \(EU\) 2017/2401 of the European Parliament and of the Council of 12 December 2017 amending Regulation \(EU\) No 575/2013 on prudential requirements for credit institutions and investment firms](#).
- F4** Substituted by [Regulation \(EU\) 2019/630 of the European Parliament and of the Council of 17 April 2019 amending Regulation \(EU\) No 575/2013 as regards minimum loss coverage for non-performing exposures \(Text with EEA relevance\)](#).
- F5** Inserted by [Regulation \(EU\) 2019/630 of the European Parliament and of the Council of 17 April 2019 amending Regulation \(EU\) No 575/2013 as regards minimum loss coverage for non-performing exposures \(Text with EEA relevance\)](#).

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Article 37

Deduction of intangible assets

Institutions shall determine the amount of intangible assets to be deducted in accordance with the following:

- (a) the amount to be deducted shall be reduced by the amount of associated deferred tax liabilities that would be extinguished if the intangible assets became impaired or were derecognised under the applicable accounting framework;
- (b) the amount to be deducted shall include goodwill included in the valuation of significant investments of the institution^[F1;]
- (c) ^[F2]the amount to be deducted shall be reduced by the amount of the accounting revaluation of the subsidiaries' intangible assets derived from the consolidation of subsidiaries attributable to persons other than the undertakings included in the consolidation pursuant to Chapter 2 of Title II of Part One.]

Textual Amendments

- F2** Inserted by [Regulation \(EU\) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation \(EU\) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation \(EU\) No 648/2012 \(Text with EEA relevance\).](#)

Article 38

Deduction of deferred tax assets that rely on future profitability

1 Institutions shall determine the amount of deferred tax assets that rely on future profitability that require deduction in accordance with this Article.

2 Except where the conditions laid down in paragraph 3 are met, the amount of deferred tax assets that rely on future profitability shall be calculated without reducing it by the amount of the associated deferred tax liabilities of the institution.

3 The amount of deferred tax assets that rely on future profitability may be reduced by the amount of the associated deferred tax liabilities of the institution, provided the following conditions are met:

- a the entity has a legally enforceable right under applicable national law to set off those current tax assets against current tax liabilities;
- b the deferred tax assets and the deferred tax liabilities relate to taxes levied by the same tax authority and on the same taxable entity.

4 Associated deferred tax liabilities of the institution used for the purposes of paragraph 3 may not include deferred tax liabilities that reduce the amount of intangible assets or defined benefit pension fund assets required to be deducted.

5 The amount of associated deferred tax liabilities referred to in paragraph 4 shall be allocated between the following:

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- a deferred tax assets that rely on future profitability and arise from temporary differences that are not deducted in accordance with Article 48(1);
- b all other deferred tax assets that rely on future profitability.

Institutions shall allocate the associated deferred tax liabilities according to the proportion of deferred tax assets that rely on future profitability that the items referred to in points (a) and (b) represent.

Article 39

Tax overpayments, tax loss carry backs and deferred tax assets that do not rely on future profitability

1 The following items shall not be deducted from own funds and shall be subject to a risk weight in accordance with Chapter 2 or 3 of Title II of Part Three, as applicable:

- a overpayments of tax by the institution for the current year;
- b current year tax losses of the institution carried back to previous years that give rise to a claim on, or a receivable from, a central government, regional government or local tax authority.

2 [^{F1}Deferred tax assets that do not rely on future profitability shall be limited to deferred tax assets which were created before 23 November 2016 and which arise from temporary differences, where all the following conditions are met:]

- a they are automatically and mandatorily replaced without delay with a tax credit in the event that the institution reports a loss when the annual financial statements of the institution are formally approved, or in the event of liquidation or insolvency of the institution;
- b an institution is able under the applicable national tax law to offset a tax credit referred to in point (a) against any tax liability of the institution or any other undertaking included in the same consolidation as the institution for tax purposes under that law or any other undertaking subject to the supervision on a consolidated basis in accordance with Chapter 2 of Title II of Part One;
- c where the amount of tax credits referred to in point (b) exceeds the tax liabilities referred to in that point, any such excess is replaced without delay with a direct claim on the central government of the Member State in which the institution is incorporated.

Institutions shall apply a risk weight of 100 % to deferred tax assets where the conditions laid down in points (a), (b) and (c) are met.

Article 40

Deduction of negative amounts resulting from the calculation of expected loss amounts

The amount to be deducted in accordance with point (d) of Article 36(1) shall not be reduced by a rise in the level of deferred tax assets that rely on future profitability, or other additional tax effects, that could occur if provisions were to rise to the level of expected losses referred to in Section 3 of Chapter 3 of Title II of Part Three.

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Article 41

Deduction of defined benefit pension fund assets

1 For the purposes of point (e) of Article 36(1), the amount of defined benefit pension fund assets to be deducted shall be reduced by the following:

- a the amount of any associated deferred tax liability which could be extinguished if the assets became impaired or were derecognised under the applicable accounting framework;
- b the amount of assets in the defined benefit pension fund which the institution has an unrestricted ability to use, provided that the institution has received the prior permission of the competent authority.

Those assets used to reduce the amount to be deducted shall receive a risk weight in accordance with Chapter 2 or 3 of Title II of Part Three, as applicable.

2 EBA shall develop draft regulatory technical standards to specify the criteria according to which a competent authority shall permit an institution to reduce the amount of assets in the defined benefit pension fund as specified in point (b) of paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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.

Article 42

Deduction of holdings of own Common Equity Tier 1 instruments

For the purposes of point (f) of Article 36(1), institutions shall calculate holdings of own Common Equity Tier 1 instruments on the basis of gross long positions subject to the following exceptions:

- (a) institutions may calculate the amount of holdings of own Common Equity Tier 1 instruments on the basis of the net long position provided that both the following conditions are met:
 - (i) the long and short positions are in the same underlying exposure and the short positions involve no counterparty risk;
 - (ii) either both the long and the short positions are held in the trading book or both are held in the non-trading book;
- (b) institutions shall determine the amount to be deducted for direct, indirect and synthetic holdings of index securities by calculating the underlying exposure to own Common Equity Tier 1 instruments included in those indices;
- (c) institutions may net gross long positions in own Common Equity Tier 1 instruments resulting from holdings of index securities against short positions in own Common Equity Tier 1 instruments resulting from short positions in the underlying indices, including where those short positions involve counterparty risk, provided that both the following conditions are met:

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- (i) the long and short positions are in the same underlying indices;
- (ii) either both the long and the short positions are held in the trading book or both are held in the non-trading book.

Article 43

Significant investment in a financial sector entity

For the purposes of deduction, a significant investment of an institution in a financial sector entity shall arise where any of the following conditions is met:

- (a) the institution owns more than 10 % of the Common Equity Tier 1 instruments issued by that entity;
- (b) the institution has close links with that entity and owns Common Equity Tier 1 instruments issued by that entity;
- (c) the institution owns Common Equity Tier 1 instruments issued by that entity and the entity is not included in consolidation pursuant to Chapter 2 of Title II of Part One but is included in the same accounting consolidation as the institution for the purposes of financial reporting under the applicable accounting framework.

Article 44

Deduction of holdings of Common Equity Tier 1 instruments of financial sector entities and where an institution has a reciprocal cross holding designed artificially to inflate own funds

Institutions shall make the deductions referred to in points (g), (h) and (i) of Article 36(1) in accordance with the following:

- (a) holdings of Common Equity Tier 1 instruments and other capital instruments of financial sector entities shall be calculated on the basis of the gross long positions;
- (b) Tier 1 own-fund insurance items shall be treated as holdings of Common Equity Tier 1 instruments for the purposes of deduction.

Article 45

Deduction of holdings of Common Equity Tier 1 instruments of financial sector entities

Institutions shall make the deductions required by points (h) and (i) of Article 36(1) in accordance with the following provisions:

- (a) they may calculate direct, indirect and synthetic holdings of Common Equity Tier 1 instruments of the financial sector entities on the basis of the net long position in the same underlying exposure provided that both the following conditions are met:
 - (i) [F¹the maturity date of the short position is either the same as, or later than the maturity date of the long position or the residual maturity of the short position is at least one year;]

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- (ii) either both the long position and the short position are held in the trading book or both are held in the non-trading book;
- (b) they shall determine the amount to be deducted for direct, indirect and synthetic holdings of index securities by calculating the underlying exposure to the capital instruments of the financial sector entities in those indices.

Article 46

Deduction of holdings of Common Equity Tier 1 instruments where an institution does not have a significant investment in a financial sector entity

1 For the purposes of point (h) of Article 36(1), institutions shall calculate the applicable amount to be deducted by multiplying the amount referred to in point (a) of this paragraph by the factor derived from the calculation referred to in point (b) of this paragraph:

- a the aggregate amount by which the direct, indirect and synthetic holdings by the institution of the Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments of financial sector entities in which the institution does not have a significant investment exceeds 10 % of the aggregate amount of Common Equity Tier 1 items of the institution calculated after applying the following to Common Equity Tier 1 items:
 - (i) Articles 32 to 35;
 - (ii) the deductions referred to in points (a) to (g), points (k)(ii) to (v) and point (l) of Article 36(1), excluding the amount to be deducted for deferred tax assets that rely on future profitability and arise from temporary differences;
 - (iii) Articles 44 and 45;
- b the amount of direct, indirect and synthetic holdings by the institution of the Common Equity Tier 1 instruments of those financial sector entities in which the institution does not have a significant investment divided by the aggregate amount of direct, indirect and synthetic holdings by the institution of the Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments of those financial sector entities.

2 Institutions shall exclude underwriting positions held for five working days or fewer from the amount referred to in point (a) of paragraph 1 and from the calculation of the factor referred to in point (b) of paragraph 1.

3 The amount to be deducted pursuant to paragraph 1 shall be apportioned across all Common Equity Tier 1 instruments held. Institutions shall determine the amount of each Common Equity Tier 1 instrument that is deducted pursuant to paragraph 1 by multiplying the amount specified in point (a) of this paragraph by the proportion specified in point (b) of this paragraph:

- a the amount of holdings required to be deducted pursuant to paragraph 1;
- b the proportion of the aggregate amount of direct, indirect and synthetic holdings by the institution of the Common Equity Tier 1 instruments of financial sector entities in which the institution does not have a significant investment represented by each Common Equity Tier 1 instrument held.

4 The amount of holdings referred to in point (h) of Article 36(1) that is equal to or less than 10 % of the Common Equity Tier 1 items of the institution after applying the provisions laid down in points (a)(i) to (iii) of paragraph 1 shall not be deducted and shall be subject to

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the applicable risk weights in accordance with Chapter 2 or 3 of Title II of Part Three and the requirements laid down in Title IV of Part Three, as applicable.

5 Institutions shall determine the amount of each Common Equity Tier 1 instrument that is risk weighted pursuant to paragraph 4 by multiplying the amount specified in point (a) of this paragraph by the amount specified in point (b) of this paragraph:

- a the amount of holdings required to be risk weighted pursuant to paragraph 4;
- b the proportion resulting from the calculation in point (b) of paragraph 3.

Article 47

Deduction of holdings of Common Equity Tier 1 instruments where an institution has a significant investment in a financial sector entity

For the purposes of point (i) of Article 36(1), the applicable amount to be deducted from Common Equity Tier 1 items shall exclude underwriting positions held for five working days or fewer and shall be determined in accordance with Articles 44 and 45 and Sub-section 2.

I^{F5} Article 47a

Non-performing exposures

1 For the purposes of point (m) of Article 36(1), exposure shall include any of the following items, provided they are not included in the trading book of the institution:

- a a debt instrument, including a debt security, a loan, an advance and a demand deposit;
- b a loan commitment given, a financial guarantee given or any other commitment given, irrespective of whether it is revocable or irrevocable, with the exception of undrawn credit facilities that may be cancelled unconditionally at any time and without notice, or that effectively provide for automatic cancellation due to deterioration in the borrower's creditworthiness.

2 For the purposes of point (m) of Article 36(1), the exposure value of a debt instrument shall be its accounting value measured without taking into account any specific credit risk adjustments, additional value adjustments in accordance with Articles 34 and 105, amounts deducted in accordance with point (m) of Article 36(1), other own funds reductions related to the exposure or partial write-offs made by the institution since the last time the exposure was classified as non-performing.

For the purposes of point (m) of Article 36(1), the exposure value of a debt instrument that was purchased at a price lower than the amount owed by the debtor shall include the difference between the purchase price and the amount owed by the debtor.

For the purposes of point (m) of Article 36(1), the exposure value of a loan commitment given, a financial guarantee given or any other commitment given as referred to in point (b) of paragraph 1 of this Article shall be its nominal value, which shall represent the institution's maximum exposure to credit risk without taking account of any funded or unfunded credit protection. The nominal value of a loan commitment given shall be the undrawn amount that the institution has committed to lend and the nominal value of a financial guarantee given shall be the maximum amount the entity could have to pay if the guarantee is called on.

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The nominal value referred to in the third subparagraph of this paragraph shall not take into account any specific credit risk adjustment, additional value adjustments in accordance with Articles 34 and 105, amounts deducted in accordance with point (m) of Article 36(1) or other own funds reductions related to the exposure.

3 For the purposes of point (m) of Article 36(1), the following exposures shall be classified as non-performing:

- a an exposure in respect of which a default is considered to have occurred in accordance with Article 178;
- b an exposure which is considered to be impaired in accordance with the applicable accounting framework;
- c an exposure under probation pursuant to paragraph 7, where additional forbearance measures are granted or where the exposure becomes more than 30 days past due;
- d an exposure in the form of a commitment that, were it drawn down or otherwise used, would likely not be paid back in full without realisation of collateral;
- e an exposure in form of a financial guarantee that is likely to be called by the guaranteed party, including where the underlying guaranteed exposure meets the criteria to be considered as non-performing.

For the purposes of point (a), where an institution has on-balance-sheet exposures to an obligor that are past due by more than 90 days and that represent more than 20 % of all on-balance-sheet exposures to that obligor, all on- and off-balance-sheet exposures to that obligor shall be considered to be non-performing.

4 Exposures that have not been subject to a forbearance measure shall cease to be classified as non-performing for the purposes of point (m) of Article 36(1) where all the following conditions are met:

- a the exposure meets the exit criteria applied by the institution for the discontinuation of the classification as impaired in accordance with the applicable accounting framework and of the classification as defaulted in accordance with Article 178;
- b the situation of the obligor has improved to the extent that the institution is satisfied that full and timely repayment is likely to be made;
- c the obligor does not have any amount past due by more than 90 days.

5 The classification of a non-performing exposure as non-current asset held for sale in accordance with the applicable accounting framework shall not discontinue its classification as non-performing exposure for the purposes of point (m) of Article 36(1).

6 Non-performing exposures subject to forbearance measures shall cease to be classified as non-performing for the purposes of point (m) of Article 36(1) where all the following conditions are met:

- a the exposures have ceased to be in a situation that would lead to their classification as non-performing under paragraph 3;
- b at least one year has passed since the date on which the forbearance measures were granted and the date on which the exposures were classified as non-performing, whichever is later;
- c there is no past-due amount following the forbearance measures and the institution, on the basis of the analysis of the obligor's financial situation, is satisfied about the likelihood of the full and timely repayment of the exposure.

Full and timely repayment shall not be considered likely unless the obligor has executed regular and timely payments of amounts equal to either of the following:

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- a the amount that was past due before the forbearance measure was granted, where there were amounts past due;
- b the amount that has been written-off under the forbearance measures granted, where there were no amounts past due.

7 Where a non-performing exposure has ceased to be classified as non-performing pursuant to paragraph 6, such exposure shall be under probation until all the following conditions are met:

- a at least two years have passed since the date on which the exposure subject to forbearance measures was re-classified as performing;
- b regular and timely payments have been made during at least half of the period that the exposure would be under probation, leading to the payment of a substantial aggregate amount of principal or interest;
- c none of the exposures to the obligor is more than 30 days past due.

Textual Amendments

- F5** Inserted by [Regulation \(EU\) 2019/630 of the European Parliament and of the Council of 17 April 2019 amending Regulation \(EU\) No 575/2013 as regards minimum loss coverage for non-performing exposures \(Text with EEA relevance\)](#).

Article 47b

Forbearance measures

1 Forbearance measure is a concession by an institution towards an obligor that is experiencing or is likely to experience difficulties in meeting its financial commitments. A concession may entail a loss for the lender and shall refer to either of the following actions:

- a a modification of the terms and conditions of a debt obligation, where such modification would not have been granted had the obligor not experienced difficulties in meeting its financial commitments;
- b a total or partial refinancing of a debt obligation, where such refinancing would not have been granted had the obligor not experienced difficulties in meeting its financial commitments.

2 At least the following situations shall be considered forbearance measures:

- a new contract terms are more favourable to the obligor than the previous contract terms, where the obligor is experiencing or is likely to experience difficulties in meeting its financial commitments;
- b new contract terms are more favourable to the obligor than contract terms offered by the same institution to obligors with a similar risk profile at that time, where the obligor is experiencing or is likely to experience difficulties in meeting its financial commitments;
- c the exposure under the initial contract terms was classified as non-performing before the modification to the contract terms or would have been classified as non-performing in the absence of modification to the contract terms;
- d the measure results in a total or partial cancellation of the debt obligation;
- e the institution approves the exercise of clauses that enable the obligor to modify the terms of the contract and the exposure was classified as non-performing before the exercise of those clauses, or would be classified as non-performing were those clauses not exercised;

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- f at or close to the time of the granting of debt, the obligor made payments of principal or interest on another debt obligation with the same institution, which was classified as a non-performing exposure or would have been classified as non-performing in the absence of those payments;
 - g the modification to the contract terms involves repayments made by taking possession of collateral, where such modification constitutes a concession.
- 3 The following circumstances are indicators that forbearance measures may have been adopted:
- a the initial contract was past due by more than 30 days at least once during the three months prior to its modification or would be more than 30 days past due without modification;
 - b at or close to the time of concluding the credit agreement, the obligor made payments of principal or interest on another debt obligation with the same institution that was past due by 30 days at least once during the three months prior to the granting of new debt;
 - c the institution approves the exercise of clauses that enable the obligor to change the terms of the contract, and the exposure is 30 days past due or would be 30 days past due were those clauses not exercised.
- 4 For the purposes of this Article, the difficulties experienced by an obligor in meeting its financial commitments shall be assessed at obligor level, taking into account all the legal entities in the obligor's group which are included in the accounting consolidation of the group, and natural persons who control that group.

Textual Amendments

- F5** Inserted by [Regulation \(EU\) 2019/630 of the European Parliament and of the Council of 17 April 2019 amending Regulation \(EU\) No 575/2013 as regards minimum loss coverage for non-performing exposures \(Text with EEA relevance\)](#).

Article 47c

Deduction for non-performing exposures

- 1 For the purposes of point (m) of Article 36(1), institutions shall determine the applicable amount of insufficient coverage separately for each non-performing exposure to be deducted from Common Equity Tier 1 items by subtracting the amount determined in point (b) of this paragraph from the amount determined in point (a) of this paragraph, where the amount referred to in point (a) exceeds the amount referred to in point (b):
- a the sum of:
 - (i) the unsecured part of each non-performing exposure, if any, multiplied by the applicable factor referred to in paragraph 2;
 - (ii) the secured part of each non-performing exposure, if any, multiplied by the applicable factor referred to in paragraph 3;
 - b the sum of the following items provided they relate to the same non-performing exposure:
 - (i) specific credit risk adjustments;
 - (ii) additional value adjustments in accordance with Articles 34 and 105;

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- (iii) other own funds reductions;
- (iv) for institutions calculating risk-weighted exposure amounts using the Internal Ratings Based Approach, the absolute value of the amounts deducted pursuant to point (d) of Article 36(1) which relate to non-performing exposures, where the absolute value attributable to each non-performing exposure is determined by multiplying the amounts deducted pursuant to point (d) of Article 36(1) by the contribution of the expected loss amount for the non-performing exposure to total expected loss amounts for defaulted or non-defaulted exposures, as applicable;
- (v) where a non-performing exposure is purchased at a price lower than the amount owed by the debtor, the difference between the purchase price and the amount owed by the debtor;
- (vi) amounts written-off by the institution since the exposure was classified as non-performing.

The secured part of a non-performing exposure is that part of the exposure which, for the purpose of calculating own funds requirements pursuant to Title II of Part Three, is considered to be covered by a funded credit protection or unfunded credit protection or fully and completely secured by mortgages.

The unsecured part of a non-performing exposure corresponds to the difference, if any, between the value of the exposure as referred to in Article 47a(1) and the secured part of the exposure, if any.

- 2 For the purposes of point (a)(i) of paragraph 1, the following factors shall apply:
 - a 0,35 for the unsecured part of a non-performing exposure to be applied during the period between the first and the last day of the third year following its classification as non-performing;
 - b 1 for the unsecured part of a non-performing exposure to be applied as of the first day of the fourth year following its classification as non-performing.
- 3 For the purposes of point (a)(ii) of paragraph 1, the following factors shall apply:
 - a 0,25 for the secured part of a non-performing exposure to be applied during the period between the first and the last day of the fourth year following its classification as non-performing;
 - b 0,35 for the secured part of a non-performing exposure to be applied during the period between the first and the last day of the fifth year following its classification as non-performing;
 - c 0,55 for the secured part of a non-performing exposure to be applied during the period between the first and the last day of the sixth year following its classification as non-performing;
 - d 0,70 for the part of a non-performing exposure secured by immovable property pursuant to Title II of Part Three or that is a residential loan guaranteed by an eligible protection provider as referred to in Article 201, to be applied during the period between the first and the last day of the seventh year following its classification as non-performing;
 - e 0,80 for the part of a non-performing exposure secured by other funded or unfunded credit protection pursuant to Title II of Part Three to be applied during the period between the first and the last day of the seventh year following its classification as non-performing;

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- f 0,80 for the part of a non-performing exposure secured by immovable property pursuant to Title II of Part Three or that is a residential loan guaranteed by an eligible protection provider as referred to in Article 201, to be applied during the period between the first and the last day of the eighth year following its classification as non-performing;
 - g 1 for the part of a non-performing exposure secured by other funded or unfunded credit protection pursuant to Title II of Part Three to be applied as of the first day of the eighth year following its classification as non-performing;
 - h 0,85 for the part of a non-performing exposure secured by immovable property pursuant to Title II of Part Three or that is a residential loan guaranteed by an eligible protection provider as referred to in Article 201, to be applied during the period between the first and the last day of the ninth year following its classification as non-performing;
 - i 1 for the part of a non-performing exposure secured by immovable property pursuant to Title II of Part Three or that is a residential loan guaranteed by an eligible protection provider as referred to in Article 201, to be applied as of the first day of the tenth year following its classification as non-performing.
- 4 By way of derogation from paragraph 3, the following factors shall apply to the part of the non-performing exposure guaranteed or insured by an official export credit agency:
- a 0 for the secured part of the non-performing exposure to be applied during the period between one year and seven years following its classification as non-performing; and
 - b 1 for the secured part of the non-performing exposure to be applied as of the first day of the eighth year following its classification as non-performing.

5 EBA shall assess the range of practices applied for the valuation of secured non-performing exposures and may develop guidelines to specify a common methodology, including possible minimum requirements for re-valuation in terms of timing and ad hoc methods, for the prudential valuation of eligible forms of funded and unfunded credit protection, in particular regarding assumptions pertaining to their recoverability and enforceability. Those guidelines may also include a common methodology for the determination of the secured part of a non-performing exposure, as referred to in paragraph 1.

Those guidelines shall be issued in accordance with Article 16 of Regulation (EU) No 1093/2010.

6 By way of derogation from paragraph 2, where an exposure has, between one year and two years following its classification as non-performing, been granted a forbearance measure, the factor applicable in accordance with paragraph 2 on the date on which the forbearance measure is granted shall be applicable for an additional period of one year.

By way of derogation from paragraph 3, where an exposure has, between two and six years following its classification as non-performing, been granted a forbearance measure, the factor applicable in accordance with paragraph 3 on the date on which the forbearance measure is granted shall be applicable for an additional period of one year.

This paragraph shall only apply in relation to the first forbearance measure that has been granted since the classification of the exposure as non-performing.]

Textual Amendments

- F5** Inserted by [Regulation \(EU\) 2019/630 of the European Parliament and of the Council of 17 April 2019 amending Regulation \(EU\) No 575/2013 as regards minimum loss coverage for non-performing exposures \(Text with EEA relevance\).](#)

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Sub-Section 2

Exemptions from and alternatives to deduction from Common Equity Tier 1 items

Article 48

Threshold exemptions from deduction from Common Equity Tier 1 items

1 In making the deductions required pursuant to points (c) and (i) of Article 36(1), institutions are not required to deduct the amounts of the items listed in points (a) and (b) of this paragraph which in aggregate are equal to or less than the threshold amount referred to in paragraph 2:

- a deferred tax assets that are dependent on future profitability and arise from temporary differences, and in aggregate are equal to or less than 10 % of the Common Equity Tier 1 items of the institution calculated after applying the following:
 - (i) Articles 32 to 35;
 - (ii) points (a) to (h), points (k)(ii) to (v) and point (l) of Article 36(1), excluding deferred tax assets that rely on future profitability and arise from temporary differences.
- b where an institution has a significant investment in a financial sector entity, the direct, indirect and synthetic holdings of that institution of the Common Equity Tier 1 instruments of those entities that in aggregate are equal to or less than 10 % of the Common Equity Tier 1 items of the institution calculated after applying the following:
 - (i) Article 32 to 35;
 - (ii) points (a) to (h), points (k)(ii) to (v) and point (l), of Article 36(1) excluding deferred tax assets that rely on future profitability and arise from temporary differences.

2 For the purposes of paragraph 1, the threshold amount shall be equal to the amount referred to in point (a) of this paragraph multiplied by the percentage referred to in point (b) of this paragraph:

- a the residual amount of Common Equity Tier 1 items after applying the adjustments and deductions in Articles 32 to 36 in full and without applying the threshold exemptions specified in this Article;
- b 17,65 %.

3 For the purposes of paragraph 1, an institution shall determine the portion of deferred tax assets in the total amount of items that is not required to be deducted by dividing the amount specified in point (a) of this paragraph by the amount specified in point (b) of this paragraph:

- a the amount of deferred tax assets that are dependent on future profitability and arise from temporary differences, and in aggregate are equal to or less than 10 % of the Common Equity Tier 1 items of the institution;
- b the sum of the following:
 - (i) the amount referred to in point (a);
 - (ii) the amount of direct, indirect and synthetic holdings by the institution of the own funds instruments of financial sector entities in which the institution has a significant investment, and in aggregate are equal to or less than 10 % of the Common Equity Tier 1 items of the institution.

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The proportion of significant investments in the total amount of items that is not required to be deducted is equal to one minus the proportion referred to in the first subparagraph.

4 The amounts of the items that are not deducted pursuant to paragraph 1 shall be risk weighted at 250 %.

Article 49

Requirement for deduction where consolidation, supplementary supervision or institutional protection schemes are applied

1 For the purposes of calculating own funds on an individual basis, a sub-consolidated basis and a consolidated basis, where the competent authorities require or permit institutions to apply method 1, 2 or 3 of Annex I to Directive 2002/87/EC, the competent authorities may permit institutions not to deduct the holdings of own funds instruments of a financial sector entity in which the parent institution, parent financial holding company or parent mixed financial holding company or institution has a significant investment, provided that the conditions laid down in points (a) to (e) of this paragraph are met:

- a the financial sector entity is an insurance undertaking, a re-insurance undertaking or an insurance holding company;
- b that insurance undertaking, re-insurance undertaking or insurance holding company is included in the same supplementary supervision under Directive 2002/87/EC as the parent institution, parent financial holding company or parent mixed financial holding company or institution that has the holding;
- c the institution has received the prior permission of the competent authorities;
- d prior to granting the permission referred to in point (c), and on a continuing basis, the competent authorities are satisfied that the level of integrated management, risk management and internal control regarding the entities that would be included in the scope of consolidation under method 1, 2 or 3 is adequate;
- e the holdings in the entity belong to one of the following:
 - (i) the parent credit institution;
 - (ii) the parent financial holding company;
 - (iii) the parent mixed financial holding company;
 - (iv) the institution;
 - (v) a subsidiary of one of the entities referred to in points (i) to (iv) that is included in the scope of consolidation pursuant to Chapter 2 of Title II of Part One.

The method chosen shall be applied in a consistent manner over time.

2 For the purposes of calculating own funds on an individual basis and a sub-consolidated basis, institutions subject to supervision on a consolidated basis in accordance with Chapter 2 of Title II of Part One shall not deduct holdings of own funds instruments issued by financial sector entities included in the scope of consolidated supervision, unless the competent authorities determine those deductions to be required for specific purposes, in particular structural separation of banking activities and resolution planning.

Applying the approach referred to in the first subparagraph shall not entail disproportionate adverse effects on the whole or parts of the financial system in other

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Member States or in the Union as a whole forming or creating an obstacle to the functioning of the internal market.

[^{F2}This paragraph shall not apply when calculating own funds for the purposes of the requirements laid down in Articles 92a and 92b, which shall be calculated in accordance with the deduction framework set out in Article 72e(4).]

3 Competent authorities may, for the purposes of calculating own funds on an individual or sub-consolidated basis permit institutions not to deduct holdings of own funds instruments in the following cases:

a where an institution has a holding in another institution and the conditions referred to in points (i) to (v) are met:

(i) the institutions fall within the same institutional protection scheme referred to in Article 113(7);

(ii) the competent authorities have granted the permission referred to in Article 113(7);

(iii) the conditions laid down in Article 113(7) are satisfied;

(iv) the institutional protection scheme draws up a consolidated balance sheet referred to in point (e) of Article 113(7) or, where it is not required to draw up consolidated accounts, an extended aggregated calculation that is, to the satisfaction of the competent authorities, equivalent to the provisions of Directive 86/635/EEC, which incorporates certain adaptations of the provisions of Directive 83/349/EEC or of Regulation (EC) No 1606/2002, governing the consolidated accounts of groups of credit institutions. The equivalence of that extended aggregated calculation shall be verified by an external auditor and in particular that the multiple use of elements eligible for the calculation of own funds as well as any inappropriate creation of own funds between the members of the institutional protection scheme is eliminated in the calculation. [^{F1}The consolidated balance sheet or the extended aggregated calculation shall be reported to the competent authorities with the frequency set out in the implementing technical standards referred to in Article 430(7)];

(v) [^{F1}the institutions included in an institutional protection scheme meet together on a consolidated or extended aggregated basis the requirements laid down in Article 92 and carry out reporting of compliance with those requirements in accordance with Article 430.] Within an institutional protection scheme the deduction of the interest owned by co-operative members or legal entities, which are not members of the institutional protection scheme, is not required, provided that the multiple use of elements eligible for the calculation of own funds as well as any inappropriate creation of own funds between the members of the institutional protection scheme and the minority shareholder, when it is an institution, is eliminated.

b where a regional credit institution has a holding in its central or another regional credit institution and the conditions laid down in points (a)(i) to (v) are met.

4 The holdings in respect of which deduction is not made in accordance with paragraph 1, 2 or 3 shall qualify as exposures and shall be risk weighted in accordance with Chapter 2 or 3 of Title II of Part Three, as applicable.

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5 Where an institution applies method 1, 2 or 3 of Annex I to Directive 2002/87/EC, the institution shall disclose the supplementary own funds requirement and capital adequacy ratio of the financial conglomerate as calculated in accordance with Article 6 of and Annex I to that Directive.

6 EBA, EIOPA and the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010⁽²⁾ shall, through the Joint Committee, develop draft regulatory technical standards to specify for the purposes of this Article the conditions of application of the calculation methods listed in Annex I, Part II of Directive 2002/87/EC for the purposes of the alternatives to deduction referred to in paragraph 1 of this Article.

EBA, EIOPA and ESMA shall submit those draft regulatory technical standards to the Commission by 28 July 2013.

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, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively.

Textual Amendments

- F2** Inserted by [Regulation \(EU\) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation \(EU\) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation \(EU\) No 648/2012 \(Text with EEA relevance\).](#)

Section 4

Common Equity Tier 1 capital

Article 50

Common Equity Tier 1 capital

The Common Equity Tier 1 capital of an institution shall consist of Common Equity Tier 1 items after the application of the adjustments required by Articles 32 to 35, the deductions pursuant to Article 36 and the exemptions and alternatives laid down in Articles 48, 49 and 79.]

Editorial Information

- X1** Substituted by [Corrigendum to 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 \(OJ L 176, 27.6.2013, p. 1\).](#)

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- (1) [^{XI}OJ L 331, 15.12.2010, p. 48.]
- (2) [^{XI}OJ L 331, 15.12.2010, p. 84.]

Editorial Information

- X1** Substituted by [Corrigendum to 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 \(OJ L 176, 27.6.2013, p. 1\).](#)

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