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

OWN FUNDS

TITLE I

ELEMENTS OF OWN FUNDS

CHAPTER 2

Common Equity Tier 1 capital

[X1 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;

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 j 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) [F1 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[F2;]

[F3 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 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.

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

F1 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.

F2 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).

F3 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 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.

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:

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 Deferred tax assets that do not rely on future profitability shall be limited to deferred tax assets arising 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.

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:

  (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) the maturity of the short position matches the maturity of the long position or has a residual maturity of at least one year;

(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 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.

[F3Article 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.

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:

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

F3 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;

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

F3 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;

(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;

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

F3 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).

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.

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

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. The consolidated balance sheet or the extended aggregated calculation shall be reported to the competent authorities no less frequently than the frequency laid down in Article 99;

(v) 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 99. 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.

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.**]**

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).

(1) [X1 OJ L 331, 15.12.2010, p. 48.]

(2) [X1 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).