

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 4

Tier 2 capital

Section 1

Tier 2 items and instruments

Article 62

Tier 2 items

Tier 2 items shall consist of the following:

- (a) [^{F1}capital instruments where the conditions set out in Article 63 are met, and to the extent specified in Article 64;]
- (b) the share premium accounts related to instruments referred to in point (a);
- (c) for institutions calculating risk-weighted exposure amounts in accordance with Chapter 2 of Title II of Part Three [^{F2}and Articles 132a to 132c of Chapter 3 of the Standardised Approach and Internal Ratings Based Approach to Credit Risk (CRR) Part of the PRA Rulebook], general credit risk adjustments, gross of tax effects, of up to 1,25 % of risk-weighted exposure amounts calculated in accordance with Chapter 2 of Title II of Part Three [^{F2}and Articles 132a to 132c of Chapter 3 of the Standardised Approach and Internal Ratings Based Approach to Credit Risk (CRR) Part of the PRA Rulebook];
- (d) for institutions calculating risk-weighted exposure amounts under Chapter 3 of Title II of Part Three, positive amounts, gross of tax effects, resulting from the calculation laid down in Articles 158 and 159 up to 0,6 % of risk-weighted exposure amounts calculated under Chapter 3 of Title II of Part Three.

Items included under point (a) shall not qualify as Common Equity Tier 1 or Additional Tier 1 items.

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Changes to legislation: Regulation (EU) No 575/2013 of the European Parliament and of the Council, CHAPTER 4 is up to date with all changes known to be in force on or before 05 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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).
- F2** Words in Art. 62(c) inserted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **25(8)**

Article 63

Tier 2 instruments

[^{F1}Capital instruments shall qualify as Tier 2 instruments, provided that the following conditions are met:]

- (a) [^{F1}the instruments are directly issued by an institution and fully paid up;]
- (b) [^{F1}the instruments are not owned by any of the following:]
 - (i) the institution or its subsidiaries;
 - (ii) an undertaking in which the institution has participation in the form of ownership, direct or by way of control, of 20 % or more of the voting rights or capital of that undertaking;
- (c) [^{F1}the acquisition of ownership of the instruments is not funded directly or indirectly by the institution;
- (d) the claim on the principal amount of the instruments under the provisions governing the instruments ranks below any claim from eligible liabilities instruments;]
- (e) [^{F1}the instruments are not secured or are not 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 or its subsidiaries;
 - (vi) any undertaking that has close links with entities referred to in points (i) to (v);
- (f) [^{F1}the instruments are not subject to any arrangement that otherwise enhances the seniority of the claim under the instruments;
- (g) the instruments have an original maturity of at least five years;

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- (h) the provisions governing the instruments do not include any incentive for their principal amount to be redeemed or repaid, as applicable by the institution prior to their maturity;
- (i) where the instruments include one or more early repayment options, including call options, the options are exercisable at the sole discretion of the issuer;
- (j) the instruments may be called, redeemed, repaid or repurchased early only where the conditions set out in Article 77 are met, and not before five years after the date of issuance, except where the conditions set out in Article 78(4) are met;
- (k) the provisions governing the instruments do not indicate explicitly or implicitly that the instruments would be called, redeemed, repaid or repurchased early, as applicable, by the institution other than in the case of the insolvency or liquidation of the institution and the institution does not otherwise provide such an indication;
- (l) the provisions governing the instruments do not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in the case of the insolvency or liquidation of the institution;
- (m) the level of interest or dividends payments, as applicable, due on the instruments will not be amended on the basis of the credit standing of the institution or its parent undertaking;
- (n) where the issuer is established in a third country and has been designated [^{F3}by the Bank] as part of a resolution group the resolution entity of which is established in the [^{F4}United Kingdom] or where the issuer is established in [^{F5}the United Kingdom], the law or contractual provisions governing the instruments require that, upon a decision by the resolution authority to exercise the write-down and conversion powers referred to in [^{F6}section 6B of the Banking Act 2009], the principal amount of the instruments is to be written down on a permanent basis or the instruments are to be converted to Common Equity Tier 1 instruments;

where the issuer is established in a third country and has not been designated [^{F3}by the Bank] as a part of a resolution group the resolution entity of which is established in the [^{F4}United Kingdom], the law or contractual provisions governing the instruments require that, upon a decision by the relevant third-country authority, the principal amount of the instruments is to be written down on a permanent basis or the instruments are to be converted into Common Equity Tier 1 instruments;]
- (o) [^{F7}where the issuer is established in a third country and has been designated [^{F8}by the Bank] as part of a resolution group the resolution entity of which is established in the [^{F9}United Kingdom] or where the issuer is established in [^{F10}the United Kingdom], the instruments may only be issued under, or be otherwise subject to the laws of a third country where, under those laws, the exercise of the write-down and conversion powers referred to in [^{F11}section 6B of the Banking Act 2009] is effective and enforceable on the basis of statutory provisions or legally enforceable contractual provisions that recognise resolution or other write-down or conversion actions;
- (p) the instruments are not subject to set-off or netting arrangements that would undermine their capacity to absorb losses.]

[^{F7}For the purposes of point (a) of the first paragraph, only the part of the capital instrument that is fully paid up shall be eligible to qualify as a Tier 2 instrument.]

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Textual Amendments

- F3** Words in Art. 63(n) substituted (31.12.2020) by The Capital Requirements (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1232), regs. 1(3), **24(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in Art. 63(n) substituted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **25(9)(b)**
- F5** Words in Art. 63(n) substituted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **25(9)(a)**
- F6** Words in Art. 63(n) substituted (31.12.2020) by The Capital Requirements (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1232), regs. 1(3), **24(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F7** 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).
- F8** Words in Art. 63(o) substituted (31.12.2020) by The Capital Requirements (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1232), regs. 1(3), **24(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in Art. 63(o) substituted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **25(9)(b)**
- F10** Words in Art. 63(o) substituted (1.1.2022) by The Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (S.I. 2021/1376), regs. 1(3), **25(9)(a)**
- F11** Words in Art. 63(o) substituted (31.12.2020) by The Capital Requirements (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1232), regs. 1(3), **24(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

[^{F1}Article 64

Amortisation of Tier 2 instruments

1 The full amount of Tier 2 instruments with a residual maturity of more than five years shall qualify as Tier 2 items.

2 The extent to which Tier 2 instruments qualify as Tier 2 items during the final five years of maturity of the instruments is calculated by multiplying the result derived from the calculation referred to in point (a) by the amount referred to in point (b) as follows:

- a the carrying amount of the instruments on the first day of the final five-year period of their contractual maturity divided by the number of days in that period;
- b the number of remaining days of contractual maturity of the instruments.]

Article 65

Consequences of the conditions for Tier 2 instruments ceasing to be met

Where in the case of a Tier 2 instrument the conditions laid down in Article 63 cease to be met, the following shall apply:

- (a) that instrument shall immediately cease to qualify as a Tier 2 instrument;

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- (b) the part of the share premium accounts that relate to that instrument shall immediately cease to qualify as Tier 2 items.

Section 2

Deductions from Tier 2 items

Article 66

Deductions from Tier 2 items

The following shall be deducted from Tier 2 items:

- (a) direct, indirect and synthetic holdings by an institution of own Tier 2 instruments, including own Tier 2 instruments that an institution could be obliged to purchase as a result of existing contractual obligations;
- (b) direct, indirect and synthetic holdings of the Tier 2 instruments of financial sector entities with which the institution has reciprocal cross holdings that the competent authority considers to have been designed to inflate artificially the own funds of the institution;
- (c) the applicable amount determined in accordance with Article 70 of direct, indirect and synthetic holdings of the Tier 2 instruments of financial sector entities, where an institution does not have a significant investment in those entities;
- (d) direct, indirect and synthetic holdings by the institution of the Tier 2 instruments of financial sector entities where the institution has a significant investment in those entities, excluding underwriting positions held for fewer than five working days^[F1];
- (e) ^[F7]the amount of items required to be deducted from eligible liabilities items pursuant to Article 72e that exceeds the eligible liabilities items of the institution.]

Textual Amendments

- F7** 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 67

Deductions of holdings of own Tier 2 instruments

For the purposes of point (a) of Article 66, institutions shall calculate holdings on the basis of the gross long positions subject to the following exceptions:

- (a) institutions may calculate the amount of holdings on the basis of the net long position provided that both the following conditions are met:

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- (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 Tier 2 instruments in those indices;
- (c) institutions may net gross long positions in own Tier 2 instruments resulting from holdings of index securities against short positions in own Tier 2 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 68

Deduction of holdings of Tier 2 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 required by points (b), (c) and (d) of Article 66 in accordance with the following provisions:

- (a) holdings of Tier 2 instruments shall be calculated on the basis of the gross long positions;
- (b) holdings of Tier 2 own-fund insurance items and Tier 3 own-fund insurance items shall be treated as holdings of Tier 2 instruments for the purposes of deduction.

Article 69

Deduction of holdings of Tier 2 instruments of financial sector entities

Institutions shall make the deductions required by points (c) and (d) of Article 66 in accordance with the following:

- (a) they may calculate direct, indirect and synthetic holdings of Tier 2 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;]
 - (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 looking through to the underlying exposure to the capital instruments of the financial sector entities in those indices.

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Article 70

Deduction of Tier 2 instruments where an institution does not have a significant investment in a relevant entity

1 For the purposes of point (c) of Article 66, 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 Common Equity Tier 1 items of the institution calculated after applying the following:
 - (i) Articles 32 to 35;
 - (ii) 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 Tier 2 instruments of financial sector entities in which the institution does not have a significant investment divided by the aggregate amount of all 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 each Tier 2 instrument held. Institutions shall determine the amount to be deducted from each Tier 2 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 total 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 Tier 2 instruments of financial sector entities in which the institution does not have a significant investment represented by each Tier 2 instrument held.

4 The amount of holdings referred to in point (c) of Article 66(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 [F¹², Articles 132a to 132c of Chapter 3 of the Standardised Approach and Internal Ratings Based Approach to Credit Risk (CRR) Part of the PRA Rulebook] and the requirements laid down in Title IV of Part Three, as applicable.

5 Institutions shall determine the amount of each Tier 2 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.

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Textual Amendments

- F12** Words in Art. 70(4) inserted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021 \(S.I. 2021/1376\)](#), regs. 1(3), **25(10)**

Section 3

Tier 2 capital

Article 71

Tier 2 capital

The Tier 2 capital of an institution shall consist of the Tier 2 items of the institution after the deductions referred to in Article 66 and the application of Article 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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Changes to legislation:

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