

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 6

[^{F1}General requirements for own funds and eligible liabilities]

Article 73

[^{F1}Distributions on instruments]

[^{F1}1 Capital instruments and liabilities for which an institution has the sole discretion to decide to pay distributions in a form other than cash or own funds instruments shall not be eligible to qualify as Common Equity Tier 1, Additional Tier 1, Tier 2 or eligible liabilities instruments, unless the institution has received the prior permission of the competent authority.

2 Competent authorities shall grant the prior permission referred to in paragraph 1 only where they consider all the following conditions to be met:

- a the ability of the institution to cancel payments under the instrument would not be adversely affected by the discretion referred to in paragraph 1, or by the form in which distributions could be made;
- b the ability of the capital instrument or of the liability to absorb losses would not be adversely affected by the discretion referred to in paragraph 1, or by the form in which distributions could be made;
- c the quality of the capital instrument or liability would not otherwise be reduced by the discretion referred to in paragraph 1, or by the form in which distributions could be made.

The competent authority shall consult the resolution authority regarding an institution's compliance with those conditions before granting the prior permission referred to in paragraph 1.

3 Capital instruments and liabilities for which a legal person other than the institution issuing them has the discretion to decide or require that the payment of distributions on those instruments or liabilities shall be made in a form other than cash or own funds instruments shall not be eligible to qualify as Common Equity Tier 1, Additional Tier 1, Tier 2 or eligible liabilities instruments.

4 Institutions may use a broad market index as one of the bases for determining the level of distributions on Additional Tier 1, Tier 2 and eligible liabilities instruments.]

Status: Point in time view as at 31/01/2020.

Changes to legislation: Regulation (EU) No 575/2013 of the European Parliament and of the Council, CHAPTER 6 is up to date with all changes known to be in force on or before 03 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)

5 Paragraph 4 shall not apply where the institution is a reference entity in that broad market index unless both the following conditions are met:

- a the institution considers movements in that broad market index not to be significantly correlated to the credit standing of the institution, its parent institution or parent financial holding company or parent mixed financial holding company or parent mixed activity holding company;
- b the competent authority has not reached a different determination from that referred to in point (a).

[^{F16} Institutions shall report and disclose the broad market indices on which their capital instruments and eligible liabilities instruments rely.]

7 EBA shall develop draft regulatory technical standards to specify the conditions according to which indices shall be deemed to qualify as broad market indices for the purposes of paragraph 4.

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 74

Holdings of capital instruments issued by regulated financial sector entities that do not qualify as regulatory capital

Institutions shall not deduct from any element of own funds direct, indirect or synthetic holdings of capital instruments issued by a regulated financial sector entity that do not qualify as regulatory capital of that entity. Institutions shall apply risk weights to such holdings in accordance with Chapter 2 or 3 of Title II of Part Three, as applicable.

Article 75

Deduction and maturity requirements for short positions

[^{F1}The maturity requirements for short positions referred to in point (a) of Article 45, point (a) of Article 59, point (a) of Article 69 and point (a) of Article 72h shall be considered to be met in respect of positions held where all the following conditions are met:]

- (a) the institution has the contractual right to sell on a specific future date to the counterparty providing the hedge the long position that is being hedged;
- (b) the counterparty providing the hedge to the institution is contractually obliged to purchase from the institution on that specific future date the long position referred to in point (a).

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Article 76

Index holdings of capital instruments

[^{F1} For the purposes of point (a) of Article 42, point (a) of Article 45, point (a) of Article 57, point (a) of Article 59, point (a) of Article 67, point (a) of Article 69 and point (a) of Article 72h, institutions may reduce the amount of a long position in a capital instrument by the portion of an index that is made up of the same underlying exposure that is being hedged, provided that all the following conditions are met:

- a either both the long position being hedged and the short position in an index used to hedge that long position are held in the trading book or both are held in the non-trading book;
- b the positions referred to in point (a) are held at fair value on the balance sheet of the institution;
- c the short position referred to in point (a) qualifies as an effective hedge under the internal control processes of the institution;
- d the competent authorities assess the adequacy of the internal control processes referred to in point (c) on at least an annual basis and are satisfied with their continuing appropriateness.

2 Where the competent authority has granted its prior permission, an institution may use a conservative estimate of the underlying exposure of the institution to instruments included in indices as an alternative to an institution calculating its exposure to the items referred to in one or more of the following points:

- a own Common Equity Tier 1, Additional Tier 1, Tier 2 and eligible liabilities instruments included in indices;
- b Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments of financial sector entities, included in indices;
- c eligible liabilities instruments of institutions, included in indices.

3 Competent authorities shall grant the prior permission referred to in paragraph 2 only where the institution has demonstrated to their satisfaction that it would be operationally burdensome for the institution to monitor its underlying exposure to the items referred to in one or more of the points of paragraph 2, as applicable.]

4 EBA shall develop draft regulatory technical standards to specify:

- a when an estimate used as an alternative to the calculation of underlying exposure referred to in paragraph 2 is sufficiently conservative;
- b the meaning of operationally burdensome for the purposes of paragraph 3.

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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[^{F1}Article 77

Conditions for reducing own funds and eligible liabilities

1 An institution shall obtain the prior permission of the competent authority to do any of the following:

- a reduce, redeem or repurchase Common Equity Tier 1 instruments issued by the institution in a manner that is permitted under applicable national law;
- b reduce, distribute or reclassify as another own funds item the share premium accounts related to own funds instruments;
- c effect the call, redemption, repayment or repurchase of Additional Tier 1 or Tier 2 instruments prior to the date of their contractual maturity.

2 An institution shall obtain the prior permission of the resolution authority to effect the call, redemption, repayment or repurchase of eligible liabilities instruments that are not covered by paragraph 1, prior to the date of their contractual maturity.]

[^{F1}Article 78

Supervisory permission to reduce own funds

1 The competent authority shall grant permission for an institution to reduce, call, redeem, repay or repurchase Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments, or to reduce, distribute or reclassify related share premium accounts, where either of the following conditions is met:

- a before or at the same time as any of the actions referred to in Article 77(1), the institution replaces the instruments or the related share premium accounts referred to in Article 77(1) with own funds instruments of equal or higher quality at terms that are sustainable for the income capacity of the institution;
- b the institution has demonstrated to the satisfaction of the competent authority that the own funds and eligible liabilities of the institution would, following the action referred to in Article 77(1) of this Regulation, exceed the requirements laid down in this Regulation and in Directives 2013/36/EU and 2014/59/EU by a margin that the competent authority considers necessary.

Where an institution provides sufficient safeguards as to its capacity to operate with own funds above the amounts required in this Regulation and in Directive 2013/36/EU, the competent authority may grant that institution a general prior permission to take any of the actions set out in Article 77(1) of this Regulation, subject to criteria that ensure that any such future action will be in accordance with the conditions set out in points (a) and (b) of this paragraph. That general prior permission shall be granted only for a specified period, which shall not exceed one year, after which it may be renewed. The general prior permission shall be granted for a certain predetermined amount, which shall be set by the competent authority. In the case of Common Equity Tier 1 instruments, that predetermined amount shall not exceed 3 % of the relevant issue and shall not exceed 10 % of the amount by which Common Equity Tier 1 capital exceeds the sum of the Common Equity Tier 1 capital requirements laid down in this Regulation, in Directives 2013/36/EU and 2014/59/EU by a margin that the competent authority considers necessary. In the case of Additional Tier 1 or Tier 2 instruments, that predetermined amount shall not exceed 10 % of the relevant issue and shall not

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exceed 3 % of the total amount of outstanding Additional Tier 1 or Tier 2 instruments, as applicable.

Competent authorities shall withdraw the general prior permission where an institution breaches any of the criteria provided for the purposes of that permission.

2 When assessing the sustainability of the replacement instruments for the income capacity of the institution referred to in point (a) of paragraph 1, competent authorities shall consider the extent to which those replacement capital instruments would be more costly for the institution than those capital instruments or share premium accounts they would replace.

3 Where an institution takes an action referred to in point (a) of Article 77(1) and the refusal of redemption of Common Equity Tier 1 instruments referred to in Article 27 is prohibited by applicable national law, the competent authority may waive the conditions set out in paragraph 1 of this Article, provided that the competent authority requires the institution to limit the redemption of such instruments on an appropriate basis.

4 Competent authorities may permit institutions to call, redeem, repay or repurchase Additional Tier 1 or Tier 2 instruments or related share premium accounts during the five years following their date of issuance where the conditions set out in paragraph 1 and one of the following conditions is met:

- a there is a change in the regulatory classification of those instruments that would be likely to result in their exclusion from own funds or reclassification as own funds of lower quality, and both the following conditions are met:
 - (i) the competent authority considers such a change to be sufficiently certain;
 - (ii) the institution demonstrates to the satisfaction of the competent authority that the regulatory reclassification of those instruments was not reasonably foreseeable at the time of their issuance;
- b there is a change in the applicable tax treatment of those instruments which the institution demonstrates to the satisfaction of the competent authority is material and was not reasonably foreseeable at the time of their issuance;
- c the instruments and related share premium accounts are grandfathered under Article 494b;
- d before or at the same time as the action referred to in Article 77(1), the institution replaces the instruments or related share premium accounts referred to in Article 77(1) with own funds instruments of equal or higher quality at terms that are sustainable for the income capacity of the institution and the competent authority has permitted that action on the basis of the determination that it would be beneficial from a prudential point of view and justified by exceptional circumstances;
- e the Additional Tier 1 or Tier 2 instruments are repurchased for market making purposes.

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

- a the meaning of ‘sustainable for the income capacity of the institution’;
- b the appropriate bases of limitation of redemption referred to in paragraph 3;
- c the process including the limits and procedures for granting approval in advance by competent authorities for an action listed in Article 77(1), and data requirements for an application by an institution for the permission of the competent authority to carry out an action listed therein, including the process to be applied in the case of redemption of shares issued to members of cooperative societies, and the time period for processing such an application.

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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.]

f² Article 78a

Permission to reduce eligible liabilities instruments

1 The resolution authority shall grant permission for an institution to call, redeem, repay or repurchase eligible liabilities instruments where one of the following conditions is met:

- a before or at the same time as any of the actions referred to in Article 77(2), the institution replaces the eligible liabilities instruments with own funds or eligible liabilities instruments of equal or higher quality at terms that are sustainable for the income capacity of the institution;
- b the institution has demonstrated to the satisfaction of the resolution authority that the own funds and eligible liabilities of the institution would, following the action referred to in Article 77(2) of this Regulation, exceed the requirements for own funds and eligible liabilities laid down in this Regulation and in Directives 2013/36/EU and 2014/59/EU by a margin that the resolution authority, in agreement with the competent authority, considers necessary;
- c the institution has demonstrated to the satisfaction of the resolution authority that the partial or full replacement of the eligible liabilities with own funds instruments is necessary to ensure compliance with the own funds requirements laid down in this Regulation and in Directive 2013/36/EU for continuing authorisation.

Where an institution provides sufficient safeguards as to its capacity to operate with own funds and eligible liabilities above the amount of the requirements laid down in this Regulation and in Directives 2013/36/EU and 2014/59/EU, the resolution authority, after consulting the competent authority, may grant that institution a general prior permission to effect calls, redemptions, repayments or repurchases of eligible liabilities instruments, subject to criteria that ensure that any such future action will be in accordance with the conditions set out in points (a) and (b) of this paragraph. That general prior permission shall be granted only for a specified period, which shall not exceed one year, after which it may be renewed. The general prior permission shall be granted for a certain predetermined amount, which shall be set by the resolution authority. Resolution authorities shall inform the competent authorities about any general prior permission granted.

The resolution authority shall withdraw the general prior permission where an institution breaches any of the criteria provided for the purposes of that permission.

2 When assessing the sustainability of the replacement instruments for the income capacity of the institution referred to in point (a) of paragraph 1, resolution authorities shall consider the extent to which those replacement capital instruments or replacement eligible liabilities would be more costly for the institution than those they would replace.

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

- a the process of cooperation between the competent authority and the resolution authority;
- b the procedure, including the time limits and information requirements, for granting the permission in accordance with the first subparagraph of paragraph 1;

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- c the procedure, including the time limits and information requirements, for granting the general prior permission in accordance with the second subparagraph of paragraph 1;
- d the meaning of ‘sustainable for the income capacity of the institution’.

For the purposes of point (d) of the first subparagraph of this paragraph, the draft regulatory technical standards shall be fully aligned with the delegated act referred to in Article 78.

EBA shall submit those draft regulatory technical standards to the Commission by 28 December 2019.

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.]

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 79

[^{F1}Temporary waiver from deduction from own funds and eligible liabilities]

^{F11} Where an institution holds capital instruments or liabilities that qualify as own funds instruments in a financial sector entity or as eligible liabilities instruments in an institution and where the competent authority considers those holdings to be for the purposes of a financial assistance operation designed to reorganise and restore the viability of that entity or that institution, the competent authority may waive on a temporary basis the provisions on deduction that would otherwise apply to those instruments.]

2 EBA shall develop draft regulatory technical standards to specify the concept of temporary for the purposes of paragraph 1 and the conditions according to which a competent authority may deem those temporary holdings to be for the purposes of a financial assistance operation designed to reorganise and save a relevant entity.

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.

[^{F2}Article 79a

Assessment of compliance with the conditions for own funds and eligible liabilities instruments

Institutions shall have regard to the substantial features of instruments and not only their legal form when assessing compliance with the requirements laid down in Part

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Two. The assessment of the substantial features of an instrument shall take into account all arrangements related to the instruments, even where those are not explicitly set out in the terms and conditions of the instruments themselves, for the purpose of determining that the combined economic effects of such arrangements are compliant with the objective of the relevant provisions.]

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 80

[^{F1}Continuing review of the quality of own funds and eligible liabilities instruments]

[^{F11} EBA shall monitor the quality of own funds and eligible liabilities instruments issued by institutions across the Union and shall notify the Commission immediately where there is significant evidence that those instruments do not meet the respective eligibility criteria set out in this Regulation.

Competent authorities shall, without delay and upon request by EBA, forward all information to EBA that EBA considers relevant concerning new capital instruments or new types of liabilities issued in order to enable EBA to monitor the quality of own funds and eligible liabilities instruments issued by institutions across the Union.]

2 A notification shall include the following:

- a a detailed explanation of the nature and extent of the shortfall identified;
- b technical advice on the action by the Commission that EBA considers to be necessary;
- c significant developments in the methodology of EBA for stress testing the solvency of institutions.

[^{F13} EBA shall provide technical advice to the Commission on any significant changes it considers to be required to the definition of own funds and eligible liabilities as a result of any of the following:]

- a relevant developments in market standards or practice;
- b changes in relevant legal or accounting standards;
- c significant developments in the methodology of EBA for stress testing the solvency of institutions.

4 EBA shall provide technical advice to the Commission by 1 January 2014 on possible treatments of unrealised gains measured at fair value other than including them in Common Equity Tier 1 without adjustment. Such recommendations shall take into account relevant developments in international accounting standards and in international agreements on prudential standards for banks.]

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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 \(OJ L 176, 27.6.2013, p. 1\)](#).

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 \(Text with EEA relevance\)](#).

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