

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)

[^{XI}PART TWO

OWN FUNDS

[^{XI}TITLE II

**MINORITY INTEREST AND ADDITIONAL TIER 1 AND
TIER 2 INSTRUMENTS ISSUED BY SUBSIDIARIES**

Article 81

**Minority interests that qualify for inclusion in
consolidated Common Equity Tier 1 capital**

1 Minority interests shall comprise the sum of Common Equity Tier 1 instruments, the share premium accounts related to those instruments, retained earnings and other reserves of a subsidiary where the following conditions are met:

- a the subsidiary is one of the following:
 - (i) an institution;
 - (ii) an undertaking that is subject by virtue of applicable national law to the requirements of this Regulation and Directive 2013/36/EU;
- b the subsidiary is included fully in the consolidation pursuant to Chapter 2 of Title II of Part One;
- c the Common Equity Tier 1 items, referred to in the introductory part of this paragraph are owned by persons other than the undertakings included in the consolidation pursuant to Chapter 2 of Title II of Part One.

2 Minority interests that are funded directly or indirectly, through a special purpose entity or otherwise, by the parent undertaking of the institution, or its subsidiaries shall not qualify as consolidated Common Equity Tier 1 capital.

Article 82

Qualifying Additional Tier 1, Tier 1, Tier 2 capital and qualifying own funds

Qualifying Additional Tier 1, Tier 1, Tier 2 capital and qualifying own funds shall comprise the minority interest, Additional Tier 1 or Tier 2 instruments, as applicable, plus the related retained earnings and share premium accounts, of a subsidiary where the following conditions are met:

- (a) the subsidiary is either of the following:
 - (i) an institution;

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- (ii) an undertaking that is subject by virtue of applicable national law to the requirements of this Regulation and Directive 2013/36/EU;
- (b) the subsidiary is included fully in the scope of consolidation pursuant to Chapter 2 of Title II of Part One;
- (c) those instruments are owned by persons other than the undertakings included in the consolidation pursuant to Chapter 2 of Title II of Part One.

Article 83

Qualifying Additional Tier 1 and Tier 2 capital issued by a special purpose entity

1 Additional Tier 1 and Tier 2 instruments issued by a special purpose entity, and the related share premium accounts, are included in qualifying Additional Tier 1, Tier 1 or Tier 2 capital or qualifying own funds, as applicable, only where the following conditions are met:

- a the special purpose entity issuing those instruments is included fully in the consolidation pursuant to Chapter 2 of Title II of Part One;
- b the instruments, and the related share premium accounts, are included in qualifying Additional Tier 1 capital only where the conditions laid down in Article 52(1) are satisfied;
- c the instruments, and the related share premium accounts, are included in qualifying Tier 2 capital only where the conditions laid down in Article 63 are satisfied;
- d the only asset of the special purpose entity is its investment in the own funds of the parent undertaking or a subsidiary thereof that is included fully in the consolidation pursuant to Chapter 2 of Title II of Part One, the form of which satisfies the relevant conditions laid down in Articles 52(1) or 63, as applicable.

Where the competent authority considers the assets of a special purpose entity other than its investment in the own funds of the parent undertaking or a subsidiary thereof that is included in the scope of consolidation pursuant to Chapter 2 of Title II of Part One, to be minimal and insignificant for such an entity, the competent authority may waive the condition specified in point (d) of the first subparagraph.

2 EBA shall develop draft regulatory technical standards to specify the types of assets that can relate to the operation of special purpose entities and the concepts of minimal and insignificant referred to in the second subparagraph 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 84

Minority interests included in consolidated Common Equity Tier 1 capital

1 Institutions shall determine the amount of minority interests of a subsidiary that is included in consolidated Common Equity Tier 1 capital by subtracting from the minority

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interests of that undertaking the result of multiplying the amount referred to in point (a) by the percentage referred to in point (b):

- a the Common Equity Tier 1 capital of the subsidiary minus the lower of the following:
 - (i) the amount of Common Equity Tier 1 capital of that subsidiary required to meet the sum of the requirement laid down in point (a) of Article 92(1), the requirements referred to in Articles 458 and 459, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU the combined buffer requirement defined in point (6) of Article 128 of Directive 2013/36/EU, the requirements referred to in Article 500 and any additional local supervisory regulations in third countries insofar as those requirements are to be met by Common Equity Tier 1 capital;
 - (ii) the amount of consolidated Common Equity Tier 1 capital that relates to that subsidiary that is required on a consolidated basis to meet the sum of the requirement laid down in point (a) of Article 92(1), the requirements referred to in Articles 458 and 459, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in point (6) of Article 128 of Directive 2013/36/EU, the requirements referred to in Article 500 and any additional local supervisory regulations in third countries insofar as those requirements are to be met by Common Equity Tier 1 capital.
- b the minority interests of the subsidiary expressed as a percentage of all Common Equity Tier 1 instruments of that undertaking plus the related share premium accounts, retained earnings and other reserves.

2 The calculation referred to in paragraph 1 shall be undertaken on a sub-consolidated basis for each subsidiary referred to in Article 81(1).

An institution may choose not to undertake this calculation for a subsidiary referred to in Article 81(1). Where an institution takes such a decision, the minority interest of that subsidiary may not be included in consolidated Common Equity Tier 1 capital.

3 Where a competent authority derogates from the application of prudential requirements on an individual basis, as laid down in Article 7, minority interest within the subsidiaries to which the waiver is applied shall not be recognised in own funds at the sub-consolidated or at the consolidated level, as applicable.

4 EBA shall develop draft regulatory technical standards to specify the sub-consolidation calculation required in accordance with paragraph 2 of this Article, Articles 85 and 87.

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.

5 Competent authorities may grant a waiver from the application of this Article to a parent financial holding company that satisfies all the following conditions:

- a its principal activity is to acquire holdings;
- b it is subject to prudential supervision on a consolidated basis;
- c it consolidates a subsidiary institution in which it has only a minority holding by virtue of the control relationship defined in Article 1 of Directive 83/349/EEC;

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- d more than 90 % of the consolidated required Common Equity Tier 1 capital arises from the subsidiary institution referred to in point c) calculated on a sub-consolidated basis.

Where, after 28 June 2013, a parent financial holding company that meets the conditions laid down in the first subparagraph becomes a parent mixed financial holding company, competent authorities may grant the waiver referred to in the first subparagraph to that parent mixed financial holding company provided that it meets the conditions laid down in that subparagraph.

6 Where credit institutions permanently affiliated in a network to a central body and institutions established within an institutional protection scheme subject to the conditions laid down in Article 113(7) have set up a cross-guarantee scheme that provides that there is no current or foreseen material, practical or legal impediment to the transfer of the amount of own funds above the regulatory requirements from the counterparty to the credit institution, these institutions are exempted from the provisions of this Article regarding deductions and may recognise any minority interest arising within the cross-guarantee scheme in full.

Article 85

Qualifying Tier 1 instruments included in consolidated Tier 1 capital

1 Institutions shall determine the amount of qualifying Tier 1 capital of a subsidiary that is included in consolidated own funds by subtracting from the qualifying Tier 1 capital of that undertaking the result of multiplying the amount referred to in point (a) by the percentage referred to in point (b):

- a the Tier 1 capital of the subsidiary minus the lower of the following:
 - (i) the amount of Tier 1 capital of the subsidiary required to meet the sum of the requirement laid down in point (b) of Article 92(1), the requirements referred to in Articles 458 and 459, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in point (6) of Article 128 of Directive 2013/36/EU, the requirements referred to in Article 500 and any additional local supervisory regulations in third countries insofar as those requirements are to be met by Tier 1 Capital;
 - (ii) the amount of consolidated Tier 1 capital that relates to the subsidiary that is required on a consolidated basis to meet the sum of the requirement laid down in point (b) of Article 92(1), the requirements referred to in Articles 458 and 459, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in point (6) of Article 128 of Directive 2013/36/EU, the requirements referred to in Article 500 and any additional local supervisory regulations in third countries insofar as those requirements are to be met by Tier 1 Capital;
- b the qualifying Tier 1 capital of the subsidiary expressed as a percentage of all Tier 1 instruments of that undertaking plus the related share premium accounts, retained earnings and other reserves.

2 The calculation referred to in paragraph 1 shall be undertaken on a sub-consolidated basis for each subsidiary referred to in Article 81(1).

An institution may choose not to undertake this calculation for a subsidiary referred to in Article 81(1). Where an institution takes such a decision, the qualifying Tier 1 capital of that subsidiary may not be included in consolidated Tier 1 capital.

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3 Where a competent authority derogates from the application of prudential requirements on an individual basis, as laid down in Article 7, Tier 1 instruments within the subsidiaries to which the waiver is applied shall not be recognised as own funds at the sub-consolidated or at the consolidated level, as applicable.

Article 86

Qualifying Tier 1 capital included in consolidated Additional Tier 1 capital

Without prejudice to Article 84 (5) or (6), institutions shall determine the amount of qualifying Tier 1 capital of a subsidiary that is included in consolidated Additional Tier 1 capital by subtracting from the qualifying Tier 1 capital of that undertaking included in consolidated Tier 1 capital the minority interests of that undertaking that are included in consolidated Common Equity Tier 1 capital.

Article 87

Qualifying own funds included in consolidated own funds

1 Institutions shall determine the amount of qualifying own funds of a subsidiary that is included in consolidated own funds by subtracting from the qualifying own funds of that undertaking the result of multiplying the amount referred to in point (a) by the percentage referred to in point (b):

- a the own funds of the subsidiary minus the lower of the following:
 - (i) the amount of own funds of the subsidiary required to meet the sum of the requirement laid down in point (c) of Article 92(1), the requirements referred to in Articles 458 and 459, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in point (6) of Article 128 of Directive 2013/36/EU, the requirements referred to in Article 500 and any additional local supervisory regulations in third countries;
 - (ii) the amount of own funds that relates to the subsidiary that is required on a consolidated basis to meet the sum of the requirement laid down in point (c) of Article 92(1), the requirements referred to in Articles 458 and 459, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in point (6) of Article 128 of Directive 2013/36/EU, the requirements referred to in Article 500 and any additional local supervisory own funds requirement in third countries;
- b the qualifying own funds of the undertaking, expressed as a percentage of all own funds instruments of the subsidiary that are included in Common Equity Tier 1, Additional Tier 1 and Tier 2 items and the related share premium accounts, the retained earnings and other reserves.

2 The calculation referred to in paragraph 1 shall be undertaken on a sub-consolidated basis for each subsidiary referred to in Article 81(1).

An institution may choose not to undertake this calculation for a subsidiary referred to in Article 81(1). Where an institution takes such a decision, the qualifying own funds of that subsidiary may not be included in consolidated own funds.

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3 Where a competent authority derogates from the application of prudential requirements on an individual basis, as laid down in Article 7, own funds instruments within the subsidiaries to which the waiver is applied shall not be recognised as own funds at the sub-consolidated or at the consolidated level, as applicable.

Article 88

Qualifying own funds instruments included in consolidated Tier 2 capital

Without prejudice to Article 84(5) or (6), institutions shall determine the amount of qualifying own funds of a subsidiary that is included in consolidated Tier 2 capital by subtracting from the qualifying own funds of that undertaking that are included in consolidated own funds the qualifying Tier 1 capital of that undertaking that is included in consolidated Tier 1 capital.]

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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