Capital Buffer Regulation

(*Kapitalpufferverordnung* – KP-V)

Full title

Regulation of the Financial Market Authority (FMA) on the setting and recognition of the countercyclical capital buffer rate, on the setting of the systemic risk buffer as well as on the specific description of the calculation basis pursuant to Article 23a para. 3 no. 1 BWG and Article 24 para. 2 BWG (Capital Buffer Regulation – KP-V; Kapitalpuffer-Verordnung)

Original Version: Federal Law Gazette II No. 435/2015

Amendments: Federal Law Gazette II No. 117/2016; Federal Law Gazette II No. 357/2017

Preamble/Promulgation clause

Based on Article 23a para. 3, Article 23d para. 3, and Article 24 para. 2, of the Austrian Banking Act (BWG; Bankwesengesetz), as published in Federal Law Gazette No. 532/1993, last amended by the federal act in Federal Law Gazette I No. 117/2015, the following shall be determined by Regulation - and with regard to Article 23a para. 3 and Article 23d para. 3 BWG with the consent of the Federal Minister of Finance:

Text

Section 1

General Provisions

Purpose

Article 1. This Regulation shall serve to set and recognise the countercyclical capital buffer pursuant to Article 23a para. 3 BWG, to set the systemic risk buffer pursuant to Article 23d para. 3 BWG, to set the capital buffer for systemically important institutions pursuant to Article 23c para. 5 BWG as well as the specific description of the calculation base for the Maximum Distributable Amount ('MDA') as defined in Article 141 (4) of Directive 2013/36/EU pursuant to Article 24 para. 2 BWG. The Regulation implements the recommendations of the Financial Market Stability Board (FMSB) and takes into account the expert opinions of the Oesterreichische Nationalbank (OeNB).

Scope of application

Article 2. (1) Section 2 (capital buffer requirement for the countercyclical capital buffer) shall apply to credit institutions as defined in Article 1 para. 1 BWG, inasmuch as these have not been exempted from compliance with Article 23a BWG, pursuant to Article 3 BWG or Article 30a para. 6 BWG in conjunction with Article 10 of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.06.2013, p. 1, last amended by the Commission Delegated Regulation (EU) No 2015/62 in OJ L 11, of 17.01.2015, p. 37.

(2) Section 3 (Capital buffer requirement for the systemic risk buffer and for systemically important institutions) shall apply to the credit institutions that are named respectively in Articles 7 and 7b of this Regulation.

(3) Section 4 (restrictions on distributions) shall apply to credit institutions pursuant to Article 1 para. 1 BWG, inasmuch as these have not been exempt from compliance with Article 24 BWG pursuant to Article 3 BWG or Article 30a para. 6 BWG in conjunction with Article 10 of Regulation (EU) No 575/2013.

Definitions

Article 3. For the purposes of this Regulation the following definitions apply:

1. Systemic risk: systemic risk pursuant to Article 2 no. 41 BWG;

2. Capital Buffer for Systemically Important Institutions: capital buffer requirement pursuant to Article 2 no. 43 BWG;
3. Capital Buffer for Global Systemically Important Institutions: capital buffer requirement pursuant to Article 2 no. 44 BWG
4. Capital buffer requirement for the countercyclical capital buffer: capital buffer requirement pursuant to Article 2 no. 44a BWG
5. Capital buffer requirement for the systemic risk buffer: capital buffer requirement pursuant to Article 2 no. 44b BWG;
6. Combined capital buffer rate: capital buffer requirement pursuant to Article 2 no. 45 BWG expressed as a percentage of the total risk exposure calculated pursuant to Article 92 (3) of Regulation (EU) No 575/2013;
7. Systemic vulnerability: increased vulnerability of one or more credit institutions to disruptions in the financial system or parts thereof on the basis of the interconnectedness of the credit institution(s) with other market participants or the financial system in general;
8. Systemic cluster risk: risk resulting from substantial similar risk positions in the banking industry, which can lead to disruptions that may have serious negative effects on the financial system and the real economy.

Section 2

Capital buffer requirement for the countercyclical capital buffer

Identification of the capital buffer requirement

Article 4. (1) The institution-specific requirement for the countercyclical capital buffer pursuant to Article 23a para. 1 BWG shall be the weighted average of the rates of the countercyclical capital buffer that apply in the Member States and third countries in which the relevant credit risk positions of the credit institution pursuant to Article 5 of this Regulation are situated, multiplied by the total risk exposure amount pursuant to Article 92 (3) of Regulation (EU) No 575/2013.

(2) The relevant rate determined by the competent supervisory authority for the respective Member State or the respective third country for the countercyclical buffer rate shall be multiplied by the quotient, which shall be derived from the comparison of the total own funds requirements for credit risk, determined in accordance with Part Three, Titles II and IV of Regulation (EU) No 575/2013, that relates to the relevant credit exposures in the relevant Member State or the relevant third country in question, and its total own funds requirements for credit risk that relates to all of its relevant credit exposures, in order to calculate the weighted average pursuant to para. 1.

(3) For the purposes of Article 23a para. 3 no. 2 BWG, the capital buffer rate for domestically-located relevant credit exposures shall be 0% from 1 January 2016.

(4) If the competent supervisory authority of another Member State or a third country determines a rate of more than 2.5% for its Member State or its third country, a rate of 2.5% shall be applied for relevant credit exposures in this Member State or third country for the purpose of para. 1.

(5) If a competent authority of a third country sets a national buffer rate, then this shall apply after twelve months from the date on which the competent authority of the third country announced the adjustment of the buffer rate.

Relevant Credit Exposures

Article 5. (1) For the purposes of Article 4 credit exposures in all exposure classes are to be considered as relevant, with the exception of the credit exposures listed in points a to f of Article 112 or points a and b of Article 147 (2) of Regulation (EU) No 575/2013, as long as the following conditions apply to them:

1. they are subject to the own funds requirements for credit risk under Part Three, Title II of Regulation (EU) No 575/2013;
2. where the exposure is held in the trading book, then the own funds requirements for specific risk under Part Three, Title IV, Chapter 2 or incremental default and migration risk under Part Three, Title IV, Chapter 5 of Regulation (EU) No 575/2013 shall apply;
3. where the exposure is a securitisation, the own funds requirements under Part Three, Title II, Chapter 5 of Regulation (EU) No 575/2013 shall apply.

(2) The geographical location of a relevant credit exposure shall be identified pursuant to Commission Delegated Regulation (EU) No 1152/2014, OJ No. L 309 of 30.10.2014 p. 5.

Section 3

Capital buffer requirement for the systemic risk buffer and for systemically important institutions

Identification of the capital buffer requirement for the systemic risk buffer

Article 6. For the purposes of Article 23d para. 3 nos. 1 and 2 BWG, the capital buffer requirement for the systemic risk buffer shall be identified:

1. in the case of institutions listed in Article 7 paras. 1 and 2 on a consolidated basis, and shall be calculated by multiplying the total amount of the rates set in Article 7 paras. 1 and 2 for the respective named credit institution by the total risk exposure calculated pursuant to Article 92 (3) of Regulation (EU) No. 575/2013;
2. in the case of institutions listed in Article 7 paras. 3 and 4 on an unconsolidated basis, and shall be calculated by multiplying the total amount of the rates set in Article 7 paras. 3 and 4 for the respective named credit institution by the total risk exposure calculated pursuant to Article 92 (3) of Regulation (EU) No. 575/2013;

Institutions that are listed both in Article 7 paras. 1 and 2, as well as in Article 7 paras. 3 and 4, shall be required to meet the capital buffer requirement for the systemic risk buffer on a consolidated basis pursuant to no. 1 and on an unconsolidated basis pursuant to no. 2.

Rate of the capital buffer requirement for the systemic risk buffer

Article 7. (1) The capital buffer rate for systemic vulnerability in accordance with Article 133 of Directive 2013/36/EU on a consolidated basis shall be:

1. 1% for BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft on the basis of the consolidated situation of Promontoria Sacher Holding N.V.;
2. 1% for Erste Group Bank AG;
3. 1% for HYPO NOE Landesbank für Niederösterreich und Wien AG;
4. 1% for HYPO TIROL BANK AG;
5. 1% for Oberösterreichische Landesbank Aktiengesellschaft;
6. 1% for Raiffeisen Bank International AG;
7. *(repealed in amendment in Federal Law Gazette II 357/2017)*
8. 1% for RAIFFEISEN-HOLDING NIEDERÖSTERREICH-WIEN registrierte Genossenschaft mit beschränkter Haftung;
9. 1% for Raiffeisenlandesbank Oberösterreich Aktiengesellschaft on the basis of the consolidated situation of Raiffeisenbankengruppe OÖ Verbund eGen;
10. 1% for UniCredit Bank Austria AG;
11. 1% for Hypo Vorarlberg Bank AG.
12. 1% for VOLKSBANK WIEN AG in its function as the central organisation pursuant to Article 30a BWG

(2) The capital buffer rate for systemic cluster risk in accordance with Article 133 of Directive 2013/36/EU on a consolidated basis shall be:

1. 1% for Erste Group Bank AG;
2. 1% for Raiffeisen Bank International AG;
3. *(repealed in amendment in Federal Law Gazette II 357/2017)*
4. 1% for Sberbank Europe AG;
5. 1% for UniCredit Bank Austria AG;
6. 1% for DenizBank AG

(3) The capital buffer rate for systemic vulnerability in accordance with Article 133 of Directive 2013/36/EU on an unconsolidated basis shall be:

1. 1% for Erste Group Bank AG;
2. 1% for Raiffeisen Bank International AG;
3. 1% for RAIFFEISEN-HOLDING NIEDERÖSTERREICH-WIEN registrierte Genossenschaft mit beschränkter Haftung;
4. 1% for Raiffeisenlandesbank Oberösterreich Aktiengesellschaft;
5. 1% for UniCredit Bank Austria AG.

(4) The capital buffer rate for systemic cluster risk in accordance with Article 133 of Directive 2013/36/EU on an unconsolidated basis shall be:

1. 1% for DenizBank AG;
2. 1% for Erste Group Bank AG;
3. 1% for Raiffeisen Bank International AG;
4. 1% for Sberbank Europe AG.

Identification of the capital buffer requirement for systemically important institutions

Article 7a. For the purposes of Article 23c para. 5 BWG, the capital buffer requirement for systemically important institutions shall be identified on a consolidated basis, and shall be calculated by multiplying the rates set in Article 7b for the respective named credit institution by the total risk exposure calculated in accordance with Article 92 (3) of Council Regulation (EU) No. 575/2013.

Rate of the capital buffer requirement for systemically important institutions

Article 7b. The capital buffer rate for systemically important institutions in accordance with Article 131 of Directive 2013/36/EU shall be:

1. 2% for Erste Group Bank AG;
2. 2% for Raiffeisen Bank International AG;
3. *(repealed in amendment in Federal Law Gazette II 357/2017)*
4. 2% for UniCredit Bank Austria AG prior to taking Article 23c para. 8 BWG in consideration;
5. 1% for BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft on the basis of the consolidated situation of Promontoria Sacher Holding N.V.
6. 1% for RAIFFEISEN-HOLDING NIEDERÖSTERREICH-WIEN registrierte Genossenschaft mit beschränkter Haftung;
7. 1% for Raiffeisenlandesbank Oberösterreich Aktiengesellschaft on the basis of the consolidated situation of Raiffeisenbankengruppe OÖ Verbund eGen.

Section 4

Restrictions on distributions

Identification of the Maximum Distributable Amount (MDA)

Article 8. (1) In accordance with Article 141 (4) of Directive 2013/36/EU, for the purposes of the last subparagraph of Article 24 para. 2 BWG, the Maximum Distributable Amount (MDA) shall be calculated by multiplying the total pursuant to para. 2 with the factor determined pursuant to para. 3. If measures are enforced following the calculation of the Maximum Distributable Amount pursuant to Article 24 para. 2 nos. 1 to 3 BWG, then these measures shall reduce the distributable amount.

(2) The sum to be multiplied in accordance with para. 1 shall consist of:

1. interim profits not included in Common Equity Tier 1 capital pursuant to Article 26 (2) of Regulation (EU) No 575/2013 in conjunction with Article 21 of the CRR Supplementary Regulation, as published in Federal Law Gazette II No. 425/2013, that have been generated since the most recent decision on the distribution of profits or any of the actions pursuant to Article 24 para. 2 nos. 1 to 3 BWG;

plus

2. year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26 (2) of Regulation (EU) No 575/2013 in conjunction with Article 21 of the CRR Supplementary Regulation that

have been generated since the most recent decision on the distribution of profits or any of the actions pursuant to Article 24 para. 2 nos. 1 to 3 BWG;

minus

3. amounts which would be payable by tax if the items specified in nos. 1 and 2 of this paragraph were to be retained.

(3) The factor pursuant to para. 1 shall be determined as follows: If the Common Equity Tier 1 capital maintained by the institution, which is neither used to meet the own funds requirement pursuant to point (c) of Article 92 (1) of Regulation (EU) No 575/2013 nor the additional own funds requirement pursuant to Article 70 para. 4a no. 1 BWG or point (a) of Article 16 (2) of Regulation (EU) No. 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287, 29.10.2013, p. 63, expressed as a percentage of the total risk exposure calculated pursuant to Article 92 (3) of Regulation (EU) No. 575/2013,

1. greater than zero and less than one quarter of the combined capital buffer rate, then the factor shall be 0;

2. greater than or equal to one quarter of the combined capital buffer rate and less than two quarters of the combined capital buffer requirement, then the factor shall be 0.2;

3. greater than or equal to two quarters of the combined capital buffer rate and less than three quarters of the combined capital buffer requirement, then the factor shall be 0.4;

4. greater than or equal to three quarters of the combined capital buffer rate and less than the combined capital buffer requirement, then the factor shall be 0.6.

Section 5

Transitional and final provisions

Entry into force and Expiry

Article 9. (1) This Regulation shall enter into force on 1 January 2016.

(2) Article 1, Article 2 para. 2, the heading of Section 3, the heading of Article 6, Article 7a including the heading, Article 7b including the heading and Article 11 including the heading in the version of the Regulation as amended by Federal Law Gazette II No. 117/2016 shall enter into force on 1 June 2016.

(3) Article 6, Article 7 para. 1, Article 7 para. 1 nos. 3, 4, 8,11 and 12; para. 2, Article 7 para. 2 nos. 5 and 6, paras. 3 and 4, Article 7b no. 6 and Article 10 in the version of the Regulation as amended by Federal Law Gazette II No. 357/2017 shall enter into force on 1 January 2018. Article 7 para. 1 no. 7 and para. 2 no. 3 and Article 7b no. 3 shall expire at the end of 31 December 2017.

Transitional provisions for the systemic risk buffer

Article 10. (1) For credit institutions that are directly supervised by the European Central Bank pursuant to Article 6 (4) of Regulation (EU) No 1024/2013, notwithstanding para. 2 the total rates for the respective credit institutions listed in Article 7 paras. 1 and 2 as well as paras. 3 and 4 shall not exceed 1% for the period from 1 January to 31 December 2018 for the respective listed credit institution.

(2) For VOLKSBANK WIEN AG the rate determined in Article 7 para. 1 no. 12 shall be capped at:

1. 0.25% from 1 January to 31 December 2018,
2. 0.5% from 1 January to 31 December 2019.

Transitional provision for the capital buffer requirement for systemically important institutions

Article 11. (1) The rate determined in Article 7b nos. 1 to 4 for the respective named credit institution shall be capped at:

1. 0.25% for the period until 31 December 2016,
2. 0.5% for the period from 1 January to 31 December 2017,
3. 1% for the period from 1 January to 31 December 2018.

(2) The rate determined in Article 7b nos. 5 to 7 for the respective named credit institution shall be capped at:

1. 0.125% for the period until 31 December 2016,

2. 0.25% for the period from 1 January to 31 December 2017,
3. 0.5% for the period from 1 January to 31 December 2018.