



CRR Supplementary Regulation **(CRR-Begleitverordnung – CRR-BV)**

Full title

Regulation of the Financial Market Authority (FMA), on the supplementary measures for Regulation (EU) No. 575/2013 with regard to the considerations for the exercising of supervisory discretions relating to the transitional provisions with regard to own funds requirements, market risk, credit risk and consolidation requirements (CRR-Begleitverordnung – CRR-BV).

Original Version: Federal Law Gazette II No. 425/2013

Amendments: Federal Law Gazette II No. 415/2015; 403/2016; 352/2017; 336/2018

Preamble/Promulgation clause

Based on Article 21b paras. 1 and 2 of the Banking Act (BWG; Bankwesengesetz), Federal Law Gazette No. 532/1993, last amended by the federal act in Federal Law Gazette I No. 150/2017, the following shall be determined by regulation - with regard to Articles 1 to 19 of this Regulation with the consent of the Federal Minister of Finance:

Text

Section 1

Own funds requirements

Articles 1. to 6. *(repealed in Federal Law Gazette II 352/2017)*

Article 7. (1) The percentage stated in point (c) of Article 469 (1) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms, OJ L 176, 27.06.2013 p. 1, most recently amended by Regulation (EU) 2016/1014, OJ L 171, 29.06.2016, p. 153, in the version of the corrigendum published in OJ L 20, 25.01.2017, p. 3, shall be determined with regard to the items pursuant to point (c) of Article 36 (1) of Regulation (EU) No 575/2013, that existed prior to 1 January 2014 as 80 % for the 2018 calendar year.

(2) The percentage stated in point (c) of Article 469 (1) of Regulation (EU) No. 575/2013 shall be determined with regard to the items pursuant to point (c) of Article 36 (1) of Regulation (EU) No. 575/2013, which existed prior to 1 January 2014, as 100 % from the 2019 calendar year.

Articles 8. to 19. *(repealed in Federal Law Gazette II 352/2017)*

Transitional provisions for limits for grandfathering of items within Common Equity Tier 1, Additional Tier 1 and Tier 2

Article 20. For the purposes of Article 486 of the Regulation (EU) No. 575/2013 the applicable percentage shall be

1. 80 % for the 2014 calendar year;
2. 70 % for the 2015 calendar year;
3. 60 % for the 2016 calendar year;
4. 50 % for the 2017 calendar year;
5. 40 % for the 2018 calendar year;
6. 30 % for the 2019 calendar year;
7. 20 % for the 2020 calendar year;
8. 10 % for the 2021 calendar year.

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Inclusion of interim and year-end profits;

Article 21. Interim profits or year-end profits announced prior to the formal resolution passed by general meeting being taken can be considered as Common Equity Tier 1 capital subject to the conditions set in points (a) and (b) of Article 26 (2) of Regulation (EU) No. 575/2013.

Pre-authorisation for the redemption of capital holdings during the 2019 calendar year on the basis of called cooperative shares

Article 21a. (1) For credit institutions pursuant to Art. 1 para. 1 of the Austria Banking Act (BWG; Bankwesengesetz) with the legal form of a registered cooperative (*eingetragene Genossenschaft*), which are not subject to direct supervision by the European Central Bank pursuant to point (1) of Article 6 (4) and para. (6) of that Article 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 of 29.10.2013, p. 63, in the version of the corrigendum published in OJ L 218, 19.08.2015 p. 82, shall, for the 2019 calendar year, on the basis of Articles 77 and 78 of Regulation (EU) No 575/2013 in conjunction with Article 32 of the Delegated Regulation (EU) No 241/2014 supplementing Regulation (EU) No 575/2013 with regard to regulatory technical standards for Own Funds requirements for institutions, OJ L 74 of 14.03.2014 p. 8, last amended by Delegated Regulation (EU) No 2015/923, OJ L 150, 17.06.2015, p. 1, be granted preauthorisation for the redemption of capital holdings on the basis of called shares that have occurred since 1 January 2017, which qualify as Common Equity Tier 1 items as defined in point (a) of Article 26(1) or Article 484(3) of Regulation (EU) No 575/2013, up to 1 % of the eligible Common Equity Tier 1 prior to the redemption, provided that all of the following conditions are fulfilled:

1. the Common Equity Tier 1 capital ratio pursuant to point (a) of Article 92(1) of Regulation (EU) No 575/2013 is at least 7 % following the redemption;
2. the credit institution shall at all times, having conducted one of the acts listed in Article 77 of Regulation (EU) No 575/2013, hold sufficient own funds to satisfy the following requirements:
 - a) the own funds requirements set out in point (c) Article 92 (1) of Regulation (EU) No 575/2013, as well as
 - b) any additional own funds requirement over and above that set out in lit. a, that has been communicated by the supervisory authority as being necessary on a case-by-case basis as a result of the Supervisory Review Process pursuant to Article 69 BWG and on the basis of Article 104 (3) of Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.06.2013, p. 338, most recently amended by Directive 2014/59/EU, OJ L 173, 12.06.2014, p. 190, in the version of the corrigendum, OJ L 20, 25.01.2017, p. 1, as well as
 - c) the combined capital buffer requirement pursuant to Article 2 no. 45 BWG
3. the audited financial statement for 2017 with the report about the status of the cooperative shares pursuant to Article 22 of the Cooperative Societies Act (GenG; Genossenschaftsgesetz), as published in Imperial Law Gazette No. 70/1873, in the version of the federal act in Federal Law Gazette I No 43/2016, were submitted to the FMA promptly and in full to the FMA within the period specified in Article 44 para. 1 BWG;
4. the report pursuant to Art. 99 of Regulation (EU) No 575/2013 on 30 September was submitted promptly and correctly by 11 November 2018 pursuant to Art. 5 in conjunction with Arts. 2 and 3 of the Commission Implementing Regulation (EU) No 680/2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council, OJ L 191, 28.06.2014 p. 1, in the version of Regulation (EU) 2018/1627 amending Implementing Regulation (EU) No 680/2014 as regards templates and instructions, OJ L 281, 09.11.2018 p. 1;
5. Subject to the conditions pursuant to nos. 1 and 2 as well as paras. 2 and 3 of this Article being satisfied, the redemption shall at the same time also fulfil in this specific individual case, the requirements pursuant to Art. 78 of Regulation (EU) No 575/2013 and Art. 32 of Delegated Regulation (EU) No 241/2014; otherwise the FMA shall determine the conditions listed in the first half sentence not to exist by 31 December 2018 in relation to the relevant credit institution.



For the purposes of preauthorisation pursuant to this provision, other legal reasons for termination, for which the redemption of capital holdings is a consequence, shall be considered comparable to a call of cooperative shares.

(2) The amount determined in para. 1 for preauthorisation, which shall not be allowed to exceed 1 % of the eligible Common Equity Tier 1 capital prior to the redemption, shall be calculated as follows: The total of new issuances of cooperative shares paid in during the 2017 financial year that fulfil the requirements pursuant to Articles 28 and 29 of Regulation (EU) No 575/2013 shall be deducted from the total of the redemption amounts for all cooperative shares called in that year. The result shall be divided by the amount of Common Equity Tier 1 capital held at the end of the 2017 financial year added to the total of the redemption amounts for all calls made in this financial year. In the event that the calculation conducted for the 2017 financial year reveals that the total of the redemption amounts does not exceed the total of the cooperative shares issued and paid in in the same financial year, then the conditions pursuant to para. 1 nos. 1 and 2 shall not apply.

(2a) For new issuances of cooperative shares paid in pursuant to para. 2 permission to consider such cooperative shares as Common Equity Tier 1 instruments shall be granted, provided that such cooperative shares satisfy the conditions set out in Articles 28 and 29 of Regulation (EU) No 575/2013.

(3) For credit institutions, for which own funds do not reach the amount of EUR 5 000 000 required as initial capital and which, pursuant to Article 93(2) of Regulation (EU) No 575/2013, may not fall below the highest level reached, the pre-authorisation for the redemption of called cooperative shares shall be granted subject to the requirements in para. 1 to the extent that

1. the total calculated pursuant to para. 2 of the redemption amount for all cooperative shares call in during the 2017 financial year does not exceed the total of new issuances of cooperative shares paid in in the same financial year that fulfil the requirements pursuant to Articles 28 and 29 of Regulation (EU) No 575/2013, or
2. the credit institutions exceed the solvency requirements pursuant to para. 1 nos. 1 and 2 by 1% in each case.

Section 2

Conditions on holdings outside the financial sector

1 250 % risk weight

Article 22. If the thresholds determined in Article 89 (1) or (2) of Regulation (EU) No. 575/2013 are exceeded, then institutions are required to hold eligible capital pursuant to Article 4 (1) no. 71 of Regulation (EU) No. 575/2013 for the amount by which the qualifying holdings exceed these thresholds. In the event that both the thresholds mentioned in Article 89 (1) and (2) of Regulation (EU) No. 575/2013 are exceeded, then only the higher of the two exceeded amounts shall apply.

Section 3

Requirements for credit risk

Significance of a liability when qualifying as the default of an obligor

Article 23. (1) An obligation shall in any case be deemed to be material as defined in Article 178 (1) (b) of Regulation (EU) No. 575/2013, if on 90 consecutive days

1. the relationship of the total of all past due obligations of an obligor towards the institution, its parent undertaking or its subsidiary to the total amount of all exposures of the institution, its parent undertaking, or its subsidiary reported in the balance sheet towards this obligor, with the exception of exposures arising from participations exceeds 1 %, and
2. the total of all past due obligations of an obligor towards the institution, its parent undertaking or its subsidiary exceed
 - a) the amount of EUR 100 for retail exposures, or
 - b) the amount of EUR 500 for exposures which are not classed as retail exposures.

(2) In the case of institutions which apply the definition of default defined in Article 178 (1) points a and b of Regulation (EU) No 575/2013 to individual credit facilities, para. 1 shall apply subject to the proviso that the amount of the obligations of the obligor shall be applied from a single credit facility granted by

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the institution, its parent undertaking or its subsidiary as the “total amount of all exposures of the institution, its parent undertaking, or its subsidiary reported in the balance sheet towards this obligor, with the exception of exposures arising from participations” pursuant to para. 1 no. 1 as well as the “total of all past due obligations” pursuant to para. 1 nos. 1 and 2.

Exceptions of participation items from application of the IRB Approach

Article 24. Until 31 December 2017 credit institutions or groups of credit institutions applying the Internal Ratings Based approach (IRB approach) pursuant to Articles 142 to 191 of Regulation (EU) No. 575/2013 most recently amended in Regulation (EU) 2017/2401, OJ L 347, 28.12.2017, p. 1, may identify the assessment basis for the credit risk for those participation items, which it held on 31 December 2007 in accordance with the standardised approach for credit risk pursuant to Articles 111 to 141 of Regulation (EU) No. 575/2013. This position is measured on the basis of the number of shares held as of 31 December 2007 and any additional indirect increase resulting from this ownership, as long as this does not increase the level of the participation held in this entity. Participation items are excluded provided that

1. the level of the participation in a specific company has increased as a result of having acquired shares or
2. these items were held on 31 December 2007, but were however sold thereafter and subsequently repurchased.

Section 4

Requirements for market risk

Application of the mark-to-market method in accordance with Article 282 of Commission Regulation (EU) No. 575/2013;

Article 25. For transactions with a non-linear risk profile or for payment legs and transactions with underlying debt instruments, for which the institution cannot determine the delta or the modified duration on the basis of an approved model pursuant to Article 283 of Regulation (EU) No. 575/2013 for the purposes of determining the own funds requirement for market risk, institutions shall determine the value of the exposure in accordance with the mark-to-market method pursuant to Article 274 of Regulation (EU) No. 575/2013. Netting shall not be permitted.

Netting of convertible bonds as part of own funds requirements for position risks

Article 26. Convertible bonds according to Art. 174 para. 1 of the Austrian Stock Corporation Act (Aktiengesetz – AktG), Federal Law Gazette I No. 98/1965 as amended, shall be treated as equity instrument positions and may be netted against equities in which a conversion right exists, if

1. the time frame until the first day of the conversion period is less than three months, or, in the event that there has been a previous conversion period, the time frame until the next possible conversion period is less than one year, and
2. the convertible bond is to be traded at a premium of less than 10 %; the premium shall be calculated as the market price of the convertible bond less the market price of the equity, into which conversion is possible, expressed as a percentage of the market price of the equity.



Section 5

Consolidation requirements

Shares in credit institutions, CRR-credit institutions, CRR-financial institutions, CRR-investment firms, ancillary services undertakings and asset management companies as defined in Directive 2002/87/EC

Article 27. (1) For holdings as defined in Article 4 (1) no. 35 of Regulation (EU) No. 575/2013 in credit institutions, CRR-credit institutions, CRR-financial institutions, CRR-investment firms, ancillary services undertakings and asset management companies as defined in Directive 2002/87/EC, which are included upon the basis of the applicable accounting framework for the consolidated basis pursuant to Article 4 (1) no. 77 of Regulation (EU) No. 575/2013 in the consolidated financial statement using the equity method and which shall not be included pursuant to Article 18 (1) to (4) of Regulation (EU) No. 575/2013 in the supervision on a consolidated basis, for supervisory consolidation purposes pursuant to Part 1, Title II, Chapter 2 of the Community Regulation (EU) No. 575/2013 the equity method shall be applied.

(2) Differences arising from the equity method shall be treated in accordance with the provisions for the applicable accounting framework. The goodwill attributable to the difference shall be treated pursuant to point (b) of Article 37 of Regulation (EU) No. 575/2013.

Article 28. (1) If a credit institution holds direct or indirect share rights in other credit institutions, CRR-credit institutions, or CRR-financial institutions amounting to more than 10 % of the capital of these institutions, and if they are not to be incorporated in the scope of supervision on a consolidated basis in accordance with Article 18 paragraphs (1) to (4) of Regulation (EU) No. 575/2013, then a proportional consolidation may be undertaken; this also applied to holdings in credit institutions and financial institution pursuant to Article 27.

(2) Consolidation based proportionally on share rights held shall be carried out in accordance with the prescribed provisions of the relevant applicable accounting framework for conducting proportional consolidation. The supervisory treatment of any differences or exchange differences shall be done in accordance with the general provisions set in Regulation (EU) No. 575/2013.

Shares in entities, which are not credit institutions, CRR-credit institutions, CRR-financial institutions, CRR-investment firms, ancillary services undertakings or asset management companies as defined in Directive 2002/87/EC

Article 29. (1) The valuation of share rights in entities, which are not classified as credit institutions, CRR-credit institutions, CRR-financial institutions, CRR-investment firms, ancillary services undertakings or asset management companies in accordance with Directive 2002/87/EC, shall be carried out according to the applicable accounting framework for the consolidated basis in accordance with Article 4 (1) no. 77 of Regulation (EU) No. 575/2013.

(2) If a credit institution or one of the entities incorporated within the supervisory consolidation of this credit institution exercises a significant influence on companies named in para. 1, then the equity method may be consistently used for shares held in this company for the purposes of supervisory consolidation pursuant to Part 1, Title II, Chapter 2 of Regulation (EU) No. 575/2013.

(3) Differences arising from the application of the equity method shall be treated in accordance with the provisions for the applicable accounting framework. The goodwill attributable to the difference shall be treated pursuant to point (b) of Article 37 of Regulation (EU) No. 575/2013.

Consolidation of horizontal groups of undertakings

Article 30. If institutions are associated with one another by means of a relationship in accordance with Article 12 (1) of Directive 83/349/EEC, then the institution with the highest balance sheet total which is domestically incorporated shall be treated as the parent institution in the Member State for supervisory consolidation purposes pursuant to Part 1, Title II, Chapter 2 of Regulation (EU) No. 575/2013.



Section 6

Entry into force

Article 31. (1) This regulation shall enter into force on 1 January 2014.

(2) Article 1 para. 1 and Article 21a including its heading in the version of the regulation in Federal Law Gazette II No. 415/2015 enter into force on 18 December 2015.

(3) Article 21a in the version of the Regulation published in Federal Law Gazette II No. 403/2016 shall enter into force on 23 December 2016. Article 21a in the version contained in the 1st amendment to the CRR Supplementary Regulation, published in Federal Law Gazette II No. 415/2015, shall apply for redemption of capital holdings for the 2016 calendar year.

(4) Article 7, the heading of Article 21, Article 21a paras. 1, 2, 2a and 3 no. 1 in the version of the Regulation amended in in Federal Law Gazette II No. 352/2017 shall enter into force on 2 January 2018. Articles 1 to 6 and Articles 8 to 19 including their headings shall be repealed at the end of 1 January 2018. Article 21a in the version contained in the 2nd amendment to the CRR Supplementary Regulation, published in Federal Law Gazette II No. 403/2016, shall apply for the redemption of capital holdings for the 2017 calendar year.

(5) The heading of Article 21a, Article 21a paras. 1 and 2, and para. 3 no. 1, Article 23 and Article 24 in the version of the 4th amendment to the CRR Supplementary Regulation, published in Federal Law Gazette II No. 336/2018 shall enter into force on 1 January 2019. Article 21a in the version contained in the 3rd amendment to the CRR Supplementary Regulation, published in Federal Law Gazette II No. 352/2017, shall apply for the redemption of capital holdings for the 2018 calendar year. Article 23 in the version of the 4th amendment to the CRR Supplementary Regulation, published in Federal Law Gazette II No. 336/2018 shall apply from 31 December 2020. By way of derogation from this provision institutions may notify the FMA in writing that they apply Article 23 in the version of the 4th amendment to the CRR Supplementary Regulation, published in Federal Law Gazette II No. 336/2018 with effect from a date chosen by the institution, which lies between 1 June 2019 and 31 December 2020. The notification must be made at least two months prior to the date of application selected by the institution.