



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 (CRR-BV 2021; CRR-BEGLEITVERORDNUNG 2021)

CRR SUPPLEMENTARY REGULATION 2021 - CRR-BV 2021

Federal Law Gazette II No. 336/2023

Based on Article 21b paras. 1 and 2 of the Banking Act (BWG; Bankwesengesetz), published in Federal Law Gazette No. 532/1993, most recently amended by Federal Act published in Federal Law Gazette I No. 106/2023, the following shall be determined by regulation:

SECTION 1

Provisions relating to own funds

INCLUSION OF INTERIM AND YEAR-END PROFITS

Article 1. Interim profits or year-end profits announced prior to the final formal decision being taken may 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 2024 CALENDAR YEAR ON THE BASIS OF CALLED COOPERATIVE SHARES

Article 2. (1) Credit institutions pursuant to Article 1 para. 1 BWG with the legal form of a registered cooperative society (German: eingetragene Genossenschaft), which pursuant to Article 6 (4) subparagraph 1 and Article 6 (6) of Regulation (EU) No 1024/2013 are not subject to direct supervision by the European Central Bank, shall be granted prior approval for the 2024 calendar year based on Articles 77 and 78 of Regulation (EU) No 575/2013 in conjunction with Article 32 of Delegated Regulation (EU) No. 241/2014 for the repayment of share capital on the basis of terminations of shares made on or after 1 January 2022 that qualify as Common Equity Tier 1 items within the meaning of 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 capital prior to the repayment, 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 points (c) and (d) Article 92 (1) of Regulation (EU) No 575/2013, as well as
 - b. any additional own funds requirement that exceeds that set out in lit. a, that is communicated by the competent authority on a case-by-case basis as necessary based on Article 104a of Directive 2013/36/EU as the outcome of the Supervisory Review Process pursuant to Article 69 BWG, as well as
 - c. the combined capital buffer requirement pursuant to Article 22a para. 1 BWG, as well as
 - d. any recommendation for additional own funds over and above those set out in lits. a to c, which are communicated on a case-by-case basis by the competent authority pursuant to Article 104b of Directive 2013/36/EU as a result of the supervisory review process pursuant to Article 69 BWG, including the result of the stress tests conducted pursuant to Article 100 of Directive 2013/36/EU; as well as

- e. the minimum requirements on own funds and eligible liabilities (MREL) to be met pursuant to Article 100 para. 1 of the Bank Recovery and Resolution Act (BaSAG; Sanierungs- und Abwicklungsgesetz);
3. the audited financial statement for 2022 with the report about the status of the cooperative shares pursuant to Article 22 of the Cooperative Societies Act (GenG; Genossenschaftsgesetz) were submitted to the FMA promptly and in full to the FMA within the period specified in Article 44 para. 1 BWG;
4. the reporting pursuant to point a of Article 430 (1) of Regulation (EU) No 575/2013 as of 30 September was submitted pursuant to Article 5 in conjunction with Articles 2 and 3 of Implementing Regulation (EU) No 2021/451 was submitted promptly and correctly by 11 November 2023;
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 2023 in relation to the relevant credit institution.

For the purposes of pre-authorisation 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 pre-authorisation, which shall not be allowed to exceed 1 % of 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 2022 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 2022 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 2022 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.

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

(4) 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 2022 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 3. If the thresholds determined in Article 89 (1) or (2) of Regulation (EU) No. 575/2013 are exceeded, then institutions shall be required to hold eligible capital pursuant to point a of 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 4. (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 more than 90 consecutive days

1. the ratio 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 allocatable 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 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.

SECTION 4

Requirements for market risk

NETTING OF CONVERTIBLE BONDS AS PART OF OWN FUNDS REQUIREMENTS FOR POSITION RISKS

Article 5. Convertible bonds according to Art. 174 para. 1 of the Stock Corporation Act (AktG; Aktiengesetz), 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, ANCILLARY SERVICES UNDERTAKINGS

Article 6. (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, 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 Regulation (EU) No. 575/2013 the equity method shall be applied provided that the competent authority does not demand proportional or full consolidation pursuant to Article 4 (1) of Delegated Regulation (EU) 2022/676.

(2) By way of derogation from para. 1, taking into consideration Article 4 (2) and (3) of Delegated Regulation (EU) 2022/676, full consolidation of institutions or financial institutions shall be

undertaken in such cases in which the institution is exposed to the majority of the risks in conjunction with the relevant activities of that institution or financial institution, or enjoys the majority of the associated benefits, due to its organisational and financial relations to the institution or financial institution.

(3) By way of derogation from para. 1, taking into consideration Article 4 (2) and (3) of Delegated Regulation (EU) 2022/676, a proportional consolidation of institutions or financial institutions commensurate to their share of capital in this entity shall be undertaken in such cases, in which a contractual agreement exists between the institution and one or more shareholders, owners or members of the institution or financial institution in question to collectively financially support the institution or financial institution, or where there are clear indications that they would provide financial support to the institution or financial institution commensurate to their share of capital. This shall not apply in cases in which institutions are affiliated to an institutional protection scheme under the conditions set out in Article 113 (7) of Regulation (EU) No 575/2013.

(4) 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.

SHARES IN UNDERTAKINGS THAT ARE NOT CREDIT INSTITUTIONS, CRR-CREDIT INSTITUTIONS, CRR-FINANCIAL INSTITUTIONS OR ANCILLARY SERVICES UNDERTAKINGS

Article 7. (1) 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.

(2) A full consolidation is to be undertaken instead of the equity method, taking into consideration Article 7 para. 1 in conjunction with Article 4 (2) and (3) of Delegated Regulation (EU) 2022/676 for a subsidiary or an undertaking in which an institution has a participation in those cases in which the institution is exposed to the majority of the risks in conjunction with the relevant activities of that subsidiary or undertaking, or enjoys the majority of the associated benefits, due to its organisational and financial relations to the relevant subsidiary or undertaking.

(3) A proportional consolidation is to be undertaken instead of the equity method, taking into consideration Article 7 para. 1 in conjunction with Article 4 (2) and (3) of Delegated Regulation (EU) 2022/676 for a subsidiary or an undertaking in which an institution has a participation that is commensurate to the share of capital held in that entity, provided that one of the following conditions is met:

1. the undertaking is jointly controlled by the institution together with one or more undertakings not included in the consolidation pursuant to a legally enforceable contractual arrangement between them or to clauses of the undertaking's memoranda or articles of association and the decisions about the undertaking's relevant activities require the unanimous consent of all the participating undertakings;

2. there is a contractual agreement between the institution and one or more shareholders, owners or members of the undertaking to jointly provide financial support to that undertaking or there is strong evidence that they would financially support the undertaking according to the share of capital held in it.

CONSOLIDATION IN THE CASE OF SIGNIFICANT INFLUENCE WITHOUT CAPITAL TIES

Article 8. Where an institution exercises a significant influence over one or more institutions or financial institutions, but without holding a participation or other capital ties in those institutions, then taking into consideration Article 5 (1), (4) and (5) of Delegated Regulation (EU) 2022/676 full consolidation shall be performed in those cases in which the institution that exercises the significant influence is exposed to the majority of the risks in conjunction with the relevant activities of those institutions or financial institutions, or enjoys the majority of the associated benefits, due to its organisational and financial relations to the relevant institutions or financial institutions.

CONSOLIDATION OF HORIZONTAL GROUPS OF UNDERTAKINGS

Article 9. Where institutions are connected with one another by means of a relationship as defined in Article 22 (7) of Directive 2013/34/EU then consolidation shall be performed pursuant to the provisions of Article 2 of Delegated Regulation (EU) 2022/676.

SECTION 6

Final provisions

REFERENCES

Article 10. (1) The following shall apply to references to laws (Federal Acts) in this Regulation:

1. where reference is made to provisions in the Austrian Banking Act (BWG; Bankwesengesetz), published in Federal Law Gazette no. 532/1993, the version amended by Federal Act in Federal Law Gazette I No. 36/2022 shall apply;
2. where reference is made to provisions in the Bank Recovery and Resolution Act (BaSAG; Sanierungs- und Abwicklungsgesetz), published in Federal Law Gazette I no. 98/2014, the version amended by Federal Act in Federal Law Gazette I No. 57/2022 shall apply;
3. where reference is made to provisions in the Stock Corporation Act (AktG; Aktiengesetz), published in Federal Law Gazette no. 98/1965, the version amended by Federal Act in Federal Law Gazette I No. 86/2021 shall apply;
4. where reference is made to provisions in the Cooperative Societies Act (GenG; Genossenschaftsgesetz), published in Federal Law Gazette no. 70/1873, the version amended by Federal Act in Federal Law Gazette I No. 86/2021 shall apply;

(2) The following shall apply to references to legal acts under European law in this Regulation:

1. where reference is made to provisions in Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013, p. 1, the version amended by Regulation (EU) no. 2021/558, OJ L 116, 06.04.2021, p. 25, shall apply;
2. where reference is made to provisions in 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, the version amended by the corrigendum in OJ L 218, 19.08.2015 p. 82, shall apply;
3. where reference is made to provisions in 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, the version amended by Directive (EU) 2021/338, OJ L 68, 26.02.2021, p. 14, shall apply;
4. where reference is made to provisions in the Delegated Regulation (EU) 241/2014 to supplement Regulation (EU) No 575/2013 with regard to liquidity coverage requirement for Credit Institutions, OJ L 74, 14.03.2014, p. 8, the version amended by Delegated Regulation (EU) 2023/827, OJ L 104, 19.04.2023, p. 1, shall apply;
5. where reference is made to provisions in Implementing Regulation (EU) No 2021/451 laying down implementing technical standards for the application of Regulation (EU) No 575/2013 with regard to supervisory reporting of institutions and repealing Regulation (EU) No 680/2014, OJ L 97, 19.03.2021 p. 1, the version of the corrigendum in OJ L 410, 18.11.2021, p. 201 shall apply;
6. where reference is made to provisions in Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC, OJ L 35, 11.02.2003, p. 1, the version amended by Directive (EU) 2019/2034, OJ L 314, 05.12.2019, p. 64, shall apply;
7. where reference is made to provisions in Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC and repealing Directives 78/660/EEC and 83/349/EEC, OJ L 182, 29.06.2013, p. 86, the version amended by Directive (EU) 2021/2101, OJ L 429, 01.12.2021, p. 1, shall apply;
8. where reference is made to provisions in Delegated Regulation (EU) 2022/676 supplementing Regulation (EU) No 575/2013 specifying the conditions in accordance with which consolidation is to be carried out in the cases referred to in Article 18(3) to (6) and Article 18(8) of that Regulation, OJ L 123, 26.04.2022, p. 1, it shall apply in its original version.

TRANSITIONAL PROVISIONS

Article 11. Exposures to the central governments and central banks of Member States, where they are in the domestic currency of another Member State and have been refinanced, may be held up to the following upper boundaries have taken into account the impact of credit risk mitigation pursuant to Articles 399 to 403 of Regulation (EU) No 575/2013:

1. 100 % of the institution's Tier 1 capital until 31 December 2023;
2. 75 % of the institution's Tier 1 capital between 1 January and 31 December 2024;
3. 50 % of the institution's Tier 1 capital between 1 January and 31 December 2025;

Article 12. 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 2022 calendar year.

ENTRY INTO FORCE AND REPEAL

Article 13. (1) This Regulation shall enter into force on 1 January 2022.

(2) The CRR Supplementary Regulation (CRR-BV; CRR-Begleitverordnung), published in Federal Law Gazette II No. 425/2013, most recently amended by means of Regulation in Federal Law Gazette II No. 584/2020, shall be repealed upon expiry of 31 December 2021.

(3) Article 2 paras. 1, 2 and 4 no. 1 including heading, Articles 6 to 9 including their respective headings as well as Article 10 para. 1 nos. 1 and 2 and para. 2 nos. 5, 7 and 8 in the version of the Regulation amended in Federal Law Gazette II No. 482/2022 shall enter into force on 1 January 2023. Article 2 in the version of the Regulation published in Federal Law Gazette II No. 542/2021 shall continue to apply for the redemption of capital holdings during the 2021 calendar year.

(4) The introductory sentence in Article 2 para. 1, Article 2 para. 1 nos. 3 to 5, para. 2 and para. 4 no. 1 including heading as well as Article 10 para. 2 no. 4 in the version of the Regulation amended in Federal Law Gazette II no. 336/2023 enter into force on 1 January 2024.