

**COMMISSION de SURVEILLANCE  
du SECTEUR FINANCIER**

In case of discrepancies between the French and the English text, the French text shall prevail.

**CSSF Regulation N° 14-01 on the implementation of certain discretions of  
Regulation (EU) No 575/2013**

**(Mémorial A – No. 23 of 20 February 2014)**

The Executive Board of the Commission de Surveillance du Secteur Financier,

Having regard to Article 108a of the Constitution;

Having regard to the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier") and in particular Article 9(2) thereof;

Having regard to the Law of 5 April 1993 on the financial sector ("LFS") and in particular Article 56 thereof;

Having regard 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;

Having regard to Directive 2013/36/EU of the European Parliament and the Council of 26 June 2013 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;

Having regard to the opinion of the Consultative committee for the prudential regulation;

Decides:

**Part I**  
**Scope**

**Article 1**  
**Scope**

This Regulation shall apply to all institutions referred to in point (3) of Article 4(1) of Regulation (EU) No 575/2013, hereinafter "CRR institutions", as well as to the Luxembourg branches of such institutions incorporated in a third country, hereinafter deemed to be included in the concept of CRR institutions.

**Part II**  
**Own funds**

**Article 2**

**Prior approval of the CSSF with respect to Additional Tier 1 instruments**

(1) By virtue of Recital 75 of Regulation (EU) No 575/2013, the CRR institutions that wish to include Additional Tier 1 instruments in their own funds shall obtain the prior approval of the CSSF. The CSSF shall verify the compliance with the conditions set out in Part Two of Regulation (EU) No 575/2013.

(2) A copy of the contractual documentation governing the instrument concerned, duly signed by the parties, shall be provided to the CSSF once the approval referred to in paragraph (1) has been obtained.

**Article 3**

**Prior approval of the CSSF with respect to Tier 2 instruments**

(1) By virtue of Recital 75 of Regulation (EU) No 575/2013, the CRR institutions that wish to include Tier 2 instruments, whether they are capital instruments or subordinated loans, in their own funds, shall obtain the prior approval of the CSSF. The CSSF shall verify the compliance with the conditions set out in Part Two of Regulation (EU) No 575/2013.

(2) A copy of the contractual documentation governing the instrument concerned, duly signed by the parties, shall be provided to the CSSF once the approval referred to in paragraph (1) has been obtained.

**Article 4**

**Requirement for deduction where consolidation, supplementary supervision or institutional protection schemes are applied**

(1) The CRR institutions that wish to exercise the option provided for in Article 49(1) of Regulation (EU) No 575/2013 not to deduct the holdings of own funds instruments of a financial sector entity in which the parent institution, parent financial holding company or parent mixed financial holding company has a significant investment, shall obtain the prior approval of the CSSF. The CSSF shall verify the compliance with the conditions set out in Article 49(1) of Regulation (EU) No 575/2013.

(2) The option provided for in Article 49(3) of Regulation (EU) No 575/2013 shall not be exercised in Luxembourg.

**Article 5**

**Own funds requirements applicable as of 1 January 2014**

By virtue of Article 465 of Regulation (EU) No 575/2013, CRR institutions shall apply the following own funds requirements during the period from 1 January 2014 to 31 December 2014:

(a) a Common Equity Tier 1 capital ratio of 4.5%; and

(b) a Tier 1 capital ratio of 6%.

Consequently, as of 2014, CRR institutions shall meet the three solvency ratios defined in Article 92(1) of Regulation (EU) No 575/2013.

### **Article 6 Capital buffers applicable as of 1 January 2014**

By virtue of Article 56 of the LFS, CRR institutions shall have a capital conservation buffer made up of Common Equity Tier 1 equal to 2.5% of the total amount of their risk exposure, calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 on an individual and consolidated basis, as applicable, in accordance with Part One, Title II of that regulation.

### **Article 7 Unrealised losses measured at fair value**

(1) The applicable percentage referred to in Article 467(1) of Regulation (EU) No 575/2013 shall be determined as follows:

In 2014, the higher of:

- (a) the percentage of unrealised losses measured at fair value referred to in Article 35 of Regulation (EU) No 575/2013 and included by the CRR institution in the calculation of Common Equity Tier 1 items as at 31 December 2013; and
- (b) 20%.

In 2015, the higher of:

- (a) the percentage of unrealised losses measured at fair value referred to in Article 35 of Regulation (EU) No 575/2013 and included by the CRR institution in the calculation of Common Equity Tier 1 items as at 31 December 2013; and
- (b) 40%.

In 2016, the higher of:

- (a) the percentage of unrealised losses measured at fair value referred to in Article 35 of Regulation (EU) No 575/2013 and included by the CRR institution in the calculation of Common Equity Tier 1 items as at 31 December 2013; and
- (b) 60%.

In 2017, the higher of:

- (a) the percentage of unrealised losses measured at fair value referred to in Article 35 of Regulation (EU) No 575/2013 and included by the CRR institution in the calculation of Common Equity Tier 1 items as at 31 December 2013; and
- (b) 80%.

(2) By way of derogation from paragraph 1 and without prejudice to Article 8, CRR institutions shall be authorised not to include in any element of own funds unrealised gains or losses on exposures to central governments classified in the 'Available for Sale' category of the International Accounting Standard (IAS) 39, as endorsed by the European Union.

The treatment set out in the first subparagraph shall be used only by the CRR institutions that have been authorised to apply this treatment before 1 January 2014. It shall only be applied until the European Commission has adopted a regulation on the basis of Regulation (EC) No 1606/2002 endorsing the International Financial Reporting Standard replacing IAS 39.

**Article 8**  
**Unrealised gains measured at fair value**

The applicable percentage referred to in Article 468(1) of Regulation (EU) No 575/2013 shall be 100% in 2014, 2015, 2016 and 2017.

CRR institutions shall thus not be authorised to include unrealised gains measured at fair value referred to in Article 35 of Regulation (EU) No 575/2013 in the calculation of their Common Equity Tier 1 items in the years 2014 to 2017.

**Article 9**  
**Obligation to deduct equity holdings in insurance companies from Common Equity Tier 1 items**

The option referred to in Article 471 of Regulation (EU) No 575/2013 shall not be exercised in Luxembourg.

**Article 10**  
**Introduction of amendments to IAS 19**

The option referred to in Article 473 of Regulation (EU) No 575/2013 shall not be exercised in Luxembourg.

**Article 11**  
**Deferred tax assets**

(1) The applicable percentage, pursuant to Article 478(3) of Regulation (EU) No 575/2013, to deferred tax assets that rely on future profitability as from 1 January 2014 and which shall be deducted pursuant to point (c) of Article 36(1) of Regulation (EU) No 575/2013, shall be 100% as from the year 2014.

(2) By virtue of Article 478(3) of Regulation (EU) No 575/2013, the following percentages shall apply to deferred tax assets that rely on future profitability which existed before 1 January 2014 and which shall be deducted pursuant to point (c) of Article 36(1) of Regulation (EU) No 575/2013:

20% in 2014;

40% in 2015;

60% in 2016; and

80% in 2017.

Notwithstanding the percentages laid down in the first subparagraph, CRR institutions shall not apply a percentage lower than the percentage of deferred tax assets that rely on future profitability that they have already deducted from their prudential own funds as at 31 December 2013.

(3) By virtue of point (b) of Article 478(3) of Regulation (EU) No 575/2013, the following percentages shall apply to the aggregate amount of deferred tax assets that rely on future profitability and arise from temporary differences and the items referred to in point (i) of Article 36(1) of Regulation (EU) No 575/2013 that shall be deducted pursuant to Article 48 of that regulation.

20% in 2014;

40% in 2015;

60% in 2016; and

80% in 2017.

## **Article 12**

### **Applicable percentages for the other deductions from Common Equity Tier 1 items**

(1) The applicable percentage for the purposes of point (a) of Article 478(3) of Regulation (EU) No 575/2013 to the following items shall be 100% as from the year 2014:

- losses for the current financial year to be deducted pursuant to point (a) of Article 36(1) of Regulation (EU) No 575/2013;
- intangible assets to be deducted pursuant to point (b) of Article 36(1) of Regulation (EU) No 575/2013;
- for the CRR institutions calculating risk-weighted exposure amounts using the Internal Ratings Based Approach, negative amounts resulting from the calculation of expected loss amounts laid down in Articles 158 and 159 of Regulation (EU) No 575/2013 to be deducted pursuant to point (d) of Article 36(1) of that regulation;
- defined benefit pension fund assets on the balance sheet of the CRR institution to be deducted pursuant to point (e) of Article 36(1) of Regulation (EU) No 575/2013;
- direct, indirect and synthetic holdings by a CRR institution of own Common Equity Tier 1 instruments, including own Common Equity Tier 1 instruments that a CRR institution is under an actual or contingent obligation to purchase by virtue of an existing contractual obligation to be deducted pursuant to point (f) of Article 36(1) of Regulation (EU) No 575/2013;
- direct, indirect and synthetic holdings of the Common Equity Tier 1 instruments of financial sector entities where those entities have a reciprocal cross holding with the CRR institution that the CSSF considers to have been designed to inflate artificially the own funds of the institution to be deducted pursuant to point (g) of Article 36(1) of Regulation (EU) No 575/2013; and

- the applicable amount of direct, indirect and synthetic holdings by the CRR institution of Common Equity Tier 1 instruments of financial sector entities where the institution does not have a significant investment in those entities to be deducted pursuant to point (h) of Article 36(1) of Regulation (EU) No 575/2013.

### **Article 13**

#### **Applicable percentages for deductions from Additional Tier 1 items**

(1) The applicable percentage for the purposes of Article 478 of Regulation (EU) No 575/2013 to the following items shall be 100% as from the year 2014:

- direct, indirect and synthetic holdings of the Additional Tier 1 instruments of financial sector entities with which the CRR institution has reciprocal cross holdings that the CSSF considers to have been designed to inflate artificially the own funds of the CRR institution to be deducted pursuant to point (b) of Article 56 of Regulation (EU) No 575/2013;
- the applicable amount determined in accordance with Article 60 of Regulation (EU) No 575/2013 of direct, indirect and synthetic holdings of the Additional Tier 1 instruments of financial sector entities, where a CRR institution does not have a significant investment in those entities to be deducted pursuant to point (c) of Article 56 of Regulation (EU) No 575/2013; and
- direct, indirect and synthetic holdings by the CRR institution of the Additional Tier 1 instruments of financial sector entities where the CRR institution has a significant investment in those entities, excluding underwriting positions held for five working days or fewer to be deducted pursuant to point (d) of Article 56 of Regulation (EU) No 575/2013.

### **Article 14**

#### **Applicable percentages for deductions from Tier 2 items**

(1) The applicable percentage for the purposes of Article 478 of Regulation (EU) No 575/2013 to the following items shall be 100% as from the year 2014:

- direct, indirect and synthetic holdings of the Tier 2 instruments of financial sector entities with which the CRR institution has reciprocal cross holdings that the competent authority considers to have been designed to inflate artificially the own funds of the CRR institution to be deducted pursuant to point (b) of Article 66 of Regulation (EU) No 575/2013;
- the applicable amount determined in accordance with Article 70 of Regulation (EU) No 575/2013 of direct, indirect and synthetic holdings of the Tier 2 instruments of financial sector entities, where a CRR institution does not have a significant investment in those entities to be deducted pursuant to point (c) of Article 66 of Regulation (EU) No 575/2013; and
- direct, indirect and synthetic holdings by the CRR institution of the Tier 2 instruments of financial sector entities where the CRR institution has a significant investment in

those entities, excluding underwriting positions held for fewer than five working days to be deducted pursuant to point (d) of Article 66 of Regulation (EU) No 575/2013.

**Article 15**  
**Minority interests and qualifying own funds**

(1) The applicable percentage referred to in Article 479(2) of Regulation (EU) No 575/2013 shall be 0% as from the year 2014.

(2) The applicable factor referred to in Article 480(1) of Regulation (EU) No 575/2013 shall be 1 as from the year 2014.

(3) CRR institutions shall thus apply, as from 2014, the provisions of Part Two, Title II of Regulation (EU) No 575/2013 as is.

**Article 16**  
**Additional filters and deductions**

(1) The applicable percentage referred to in Article 481(1) of Regulation (EU) No 575/2013 shall be 0% as from the year 2014.

(2) The option provided for in Article 481(2) of Regulation (EU) No 575/2013 shall not be exercised in Luxembourg.

**Article 17**  
**Eligibility for grandfathering of items that qualified as own funds under national transposition measures for Directive 2006/48/EC**

The applicable percentage referred to in Article 486 of Regulation (EU) No 575/2013 shall be:

80% in 2014;

70% in 2015;

60% in 2016;

50% in 2017;

40% in 2018;

30% in 2019;

20% in 2020; and

10% in 2021.

**Part III**  
**Qualifying holdings outside the financial sector**

**Article 18**  
**Treatment of qualifying holdings outside the financial sector**

By virtue of Article 89(3) of Regulation (EU) No 575/2013, for the purpose of calculating the capital requirement in accordance with Part Three of that regulation, CRR institutions shall apply a risk weight of 1,250% to the greater of the following:

- i) the amount of qualifying holdings referred to in Article 89(1) in excess of 15% of eligible capital of the CRR institution; and
- ii) the total amount of qualifying holdings referred to in Article 89(2) that exceed 60% of the eligible capital of the CRR institution.

**Part IV**  
**Large exposures**

**Article 19**  
**Full exemptions**

(1) Pursuant to Article 493(3) of Regulation (EU) No 575/2013, the provisions of this article shall apply instead of the provisions of Article 400(2) and (3) of Regulation (EU) No 575/2013 until 31 December 2028 or until the date of entry into force of any legal act following the review in accordance with Article 507 of that regulation, whichever is the earlier.

(2) The following exposures shall be fully exempted from the application of Article 395(1) of Regulation (EU) No 575/2013:

- (a) covered bonds falling within Article 129(1), (3) and (6) of Regulation (EU) No 575/2013;
- (b) asset items constituting claims on regional governments or local authorities of Member States where those claims would be assigned a 20% risk weight under Part Three, Title II, Chapter 2 of Regulation (EU) No 575/2013 and other exposures to or guaranteed by those regional governments or local authorities, claims on which would be assigned a 20% risk weight under Part Three, Title II, Chapter 2 of that regulation;
- (c) asset items constituting claims on and other exposures, including participations or other kinds of holdings, to regional or central credit institutions with which the credit institution belongs to a network in accordance with legal or statutory provisions and which are responsible, under those provisions, for cash-clearing operations within the network;
- (d) asset items constituting claims on and other exposures to credit institutions incurred by credit institutions, one of which operates on a non-competitive basis and provides or guarantees loans under legislative programmes or its statutes, to promote specified sectors of the economy under some form of government oversight and restrictions on the use of the



loans, provided that the respective exposures arise from such loans that are passed on to the beneficiaries via credit institutions or from the guarantees of these loans;

(e) asset items constituting claims on and other exposures to institutions as defined in Article 391 of Regulation (EU) No 575/2013, provided that those exposures do not constitute such institutions' own funds, do not last longer than the following business day and are not denominated in a major trading currency, such as the euro (EUR), the US dollar (USD), the pound sterling (GBP) or the yen (JPY);

(f) asset items constituting claims on central banks in the form of required minimum reserves held at those central banks which are denominated in their national currencies;

(g) asset items constituting claims on central governments in the form of statutory liquidity requirements held in government securities which are denominated and funded in their national currencies provided that the credit assessment of those central governments assigned by a nominated ECAI is investment grade;

(h) 50% of medium/low risk off-balance sheet documentary credits and of medium/low risk off-balance sheet undrawn credit facilities referred to in Annex I of Regulation (EU) No 575/2013 and 80% of guarantees other than loan guarantees which have a legal or regulatory basis and are given for their members by mutual guarantee schemes possessing the status of credit institutions;

(i) legally required guarantees used when a mortgage loan financed by issuing mortgage bonds is paid to the mortgage borrower before the final registration of the mortgage in the land register, provided that the guarantee is not used as reducing the risk in calculating the risk-weighted exposure amounts; and

(j) assets items constituting claims on and other exposures to recognised exchanges.

## **Article 20**

### **Group exemption**

(1) Pursuant to point (c) of Article 493(3) of Regulation (EU) No 575/2013, the provisions of this article shall apply instead of the provisions of point (c) of Article 400(2) and Article 400(3) of Regulation (EU) No 575/2013 until 31 December 2028 or until the date of entry into force of any legal act following the review in accordance with Article 507 of that regulation, whichever is the earlier.

(2) Exposures, including participations or other kinds of holdings, incurred by a CRR institution to its parent undertaking, to other subsidiaries of that parent undertaking or to its own subsidiaries, in so far as those undertakings are covered by the supervision on a consolidated basis to which the CRR institution itself is subject, in accordance with Regulation (EU) No 575/2013, Directive 2002/87/EC or with equivalent standards in force in a third country, shall be exempted from the application of Article 395(1) of Regulation (EU) No 575/2013 if the following conditions are met:

a) the counterparty is itself a CRR institution, a third-country credit institution or a third-country investment firm;

b) the financial situation in terms of risks and solvency and the liquidity situation of the counterparties in question does not present disproportionate credit risks for the CRR institution;

c) financing the exposures in question does not present significant liquidity risk in terms of currency and maturity mismatches for the CRR institution; and

d) the exposures in question would have no disproportionate negative impact on the CRR institution if a resolution procedure were to be applied to all or part of the group to which the CRR institution belongs.

A CRR institution may ignore the condition set out in point (a) as regards its own subsidiaries, if these subsidiaries are covered by the supervision on a consolidated basis to which the CRR institution itself is subject, in accordance with Regulation (EU) No 575/2013, Directive 2002/87/EC or with equivalent standards in force in a third country.

(3) The CRR institutions shall be able to demonstrate, upon request and to the satisfaction of the CSSF, that the conditions set out in points (a) to (d) of paragraph (2) are met.

CRR institutions which, as at 31 December 2013, had not been granted an exemption by the CSSF under point 24 of Part XVI of Circular CSSF 06/273, or point 24 of Part XVI of Circular CSSF 07/290, shall provide the CSSF with the justification, in writing, referred to in subparagraph 1 if they intend to use the exemption provided for in paragraph (2).

Should the CSSF not be satisfied with the justification provided by the CRR institution in accordance with subparagraph 1 or subparagraph 2, it may limit the exemption referred to in paragraph (2) for the CRR institution in question.

CRR institutions shall inform the CSSF, spontaneously and without delay, of any change that occurred or of a future change that the CRR institutions are aware of and which significantly alters the degree of compliance of the CRR institutions with the conditions set out in points (a) to (d) of paragraph (2).

## **Part V** **Other provisions**

### **Article 21** **Treatment of equity exposures under the IRB Approach**

In accordance with Article 495(1) of Regulation (EU) No 575/2013 and by way of derogation from Chapter 3 of Part Three of that regulation, until 31 December 2017, equity exposures held by a CRR institution and its EU subsidiaries as at 31 December 2007 may be exempted from the IRB treatment.

The exempted position shall be measured as the number of shares as of 31 December 2007 and any additional share arising directly as a result of owning those holdings, provided that they do not increase the proportional share of ownership in a portfolio company.

If an acquisition increases the proportional share of ownership in a specific holding the part of the holding which constitutes the excess shall not be subject to the exemption. Nor shall the exemption apply to holdings that were originally subject to the exemption, but have been sold and then bought back.

Equity exposures subject to this provision shall be subject to the capital requirements calculated in accordance with the Standardised Approach under Part Three, Title II, Chapter 2 of Regulation (EU) No 575/2013 and the requirements set out in Part Three, Title IV of that regulation, as applicable.

## **Article 22**

### **Transitional provisions relating to Fonds Communs de Créances**

Until 31 December 2017, the 10% limit for senior units issued by French Fonds Communs de Créances or by securitisation entities which are equivalent to French Fonds Communs de Créances laid down in points (d) and (e) of Article 129(1) of Regulation (EU) No 575/2013, shall not be applicable, provided that both of the following conditions are fulfilled:

- (a) the securitised residential property or commercial immovable property exposures were originated by a member of the same consolidated group of which the issuer of the covered bonds is a member, or by an entity affiliated to the same central body to which the issuer of the covered bonds is affiliated, where that common group membership or affiliation shall be determined at the time the senior units are made collateral for covered bonds; and
- (b) a member of the same consolidated group of which the issuer of the covered bonds is a member, or an entity affiliated to the same central body to which the issuer of the covered bonds is affiliated, retains the whole first loss tranche supporting those senior units.

## **Article 23**

### **Transitional provisions relating to the leverage ratio**

The option provided for in Article 499(3) of Regulation (EU) No 575/2013 shall not be exercised in Luxembourg.

**Article 24**  
**Transitional requirements for liquidity**

By virtue of Article 412(5) of Regulation (EU) No 575/2013, liquidity requirements that were applicable in 2013 and notably Table B 1.5 on the liquidity ratio as described in Circulars CSSF 07/316 and CSSF 07/331 remain applicable until binding minimum standards for liquidity coverage requirements are specified and fully introduced in the Union in accordance with Article 460 of Regulation (EU) No 575/2013.

**Article 25**  
**Publication**

This regulation shall be published in the Mémorial and on the website of the Commission de Surveillance du Secteur Financier.

Luxembourg, 11 February 2014

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

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