



Part

CAPITAL BUFFERS

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1 APPLICATION AND DEFINITIONS

1.1 This Part applies to every *firm* that is a *CRR firm*.

1.2 In this Part the following definitions shall apply:

capital conservation buffer

means the amount of *common equity tier 1 capital* a *firm* must calculate in accordance with Chapter 2.

combined buffer

means the sum of

- (a) the *capital conservation buffer*; and
- (b) the *countercyclical capital buffer*.

countercyclical buffer rate

means (in accordance with point (7) of Article 128 of the *CRD*) the rate:

- (a) expressed as a percentage of *total risk exposure amount* set by the FPC or an *EEA countercyclical buffer authority*; or
- (b) expressed in terms equivalent to a percentage of *total risk exposure amount* set by a *third country countercyclical buffer authority*;

that a *firm* must apply in order to calculate its *countercyclical capital buffer*.

countercyclical capital buffer

means the amount of *common equity tier 1 capital* a *firm* must calculate in accordance with Chapter 3.

distribution in connection with common equity tier 1 capital

includes (in accordance with Article 141(10) of the *CRD*):

- (a) a payment of cash dividends;
- (b) a distribution of fully or partly paid bonus shares or other capital instruments referred to in Article 26(1)(a) of the *CRR*;
- (c) a redemption or purchase by an institution of its own shares or other capital instruments referred to in Article 26(1)(a) of the *CRR*;
- (d) a repayment of amounts paid up in connection with capital instruments referred to in Article 26(1)(a) of the *CRR*; and
- (e) a distribution of items referred to in points (b) to (e) of article 26(1) of the *CRR*

EEA countercyclical buffer authority

means the authority or body of an *EEA State* other than the *UK* designated for the purpose of Article 136 of the *CRD* with responsibility for setting the *countercyclical buffer rate* for that *EEA State* or the European Central Bank when it carries out the

task of setting a countercyclical buffer rate for an *EEA State* conferred on it by Article 5(2) of Council Regulation (EU) No. 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

FPC

means the *Financial Policy Committee*

MDA

means maximum distributable amount calculated in accordance with 4.3(4).

parent financial holding company in a Member State

means (in accordance with point (26) of Article 3(1) of the *CRD*) a *financial holding company* which is not itself a *subsidiary* of an *institution* authorised in the same *EEA State*, or of a *financial holding company* or *mixed financial holding company* set up in the same *EEA State*.

parent institution in a Member State

means (in accordance with point (24) of Article 3(1) of the *CRD*) an *institution* authorised in an *EEA State* which has an *institution* or *financial institution* as *subsidiary* or which holds a *participation* in such an *institution* or *financial institution*, and which is not itself a *subsidiary* of another *institution* authorised in the same *EEA State* or of a *financial holding company* or *mixed financial holding company* set up in the same *EEA State*.

parent mixed financial holding company in a Member State

means (in accordance with point (28) of Article 3(1) of the *CRD*) a *mixed financial holding company* which is not itself a *subsidiary* of an *institution* authorised in the same *EEA State*, or of a *financial holding company* or *mixed financial holding company* set up in the same *EEA State*.

relevant credit exposures

means (in accordance with Article 140(4) of the *CRD*) exposures other than those referred to in points (a) to (f) of Article 112 of the *CRR* that are subject to:

- (a) the *own funds* requirements for credit risk under Part Three, Title II of the *CRR*; or
- (b) where the exposure is held in the *trading book*, *own funds* requirements for specific risk under Part Three, Title IV, Chapter 2 of the *CRR* or incremental default and migration risk under Part Three, Title IV, Chapter 5 of the *CRR*; or
- (c) where the exposure is a *securitisation*, the *own funds* requirements under Part Three, Title II, Chapter 5 of the *CRR*.

third country countercyclical buffer authority

means the authority of a *third country* empowered by law or regulation with responsibility for setting the *countercyclical buffer rate* for that *third country*.

total risk exposure amount

means the total risk exposure amount of a *firm* calculated in accordance with Article 92(3) of the *CRR*.

- 1.3 Unless otherwise defined, any italicised expression used in this Part and in the *CRR* has the same meaning as in the *CRR*.

2 CAPITAL CONSERVATION BUFFER

- 2.1 A *firm* must calculate a *capital conservation buffer of common equity tier 1 capital* equal to 2.5% of its *total risk exposure amount*.

[Note: Art 129(1) (part) of the CRD]

- 2.2 This rule modifies 2.1 for a transitional period between 1 January 2016 and 31 December 2018:

- (1) from 1 January 2016 until 31 December 2016 for 2.5% there is substituted 0.625%;
- (2) from 1 January 2017 until 31 December 2017 for 2.5% there is substituted 1.25%; and
- (3) from 1 January 2018 until 31 December 2018 for 2.5% there is substituted 1.875%.

[Note: Art 160(1) to (5) (part) of the CRD]

3 COUNTERCYCLICAL CAPITAL BUFFER

Calculation of the countercyclical capital buffer

- 3.1 (1) A *firm* must calculate a *countercyclical capital buffer of common equity tier 1 capital* equal to its *total risk exposure amount* multiplied by the weighted average of the *countercyclical buffer rates* that apply to exposures in the jurisdictions where the *firm's relevant credit exposures* are located.

[Note: Art 130(1) (part) of the CRD]

- (2) In order to calculate the weighted average referred to in (1), a *firm* must apply to each applicable *countercyclical buffer rate* its total *own funds* requirements for credit risk, specific risk, incremental default and migration risk that relates to *the relevant credit exposures* in the jurisdiction in question, divided by its total *own funds* requirements for credit risk, specific risk, incremental default and migration risk that relates to all of its *relevant credit exposures*.
- (3) For the purposes of (2), a *firm* must calculate its total *own funds* requirement for credit risk, specific risk, incremental default and migration risk in accordance with Part Three, Titles II and IV of the *CRR*.
- (4) The *countercyclical buffer rate* for an exposure located in the *UK* is the rate set by the *FPC* for the *UK*.
- (5) The *countercyclical buffer rate* for an exposure located in an *EEA State* other than the *UK* is:
 - (a) the rate set by the *EEA countercyclical buffer authority* for that jurisdiction; or

- (b) if that rate exceeds 2.5% and has not been recognised by the *FPC*, 2.5%.
- (6) The *countercyclical buffer rate* for an exposure located in a *third country* is the rate set by the *FPC* for that jurisdiction.
- (7) If the *FPC* has not set a rate for a *third country*, the *countercyclical buffer rate* for an exposure located in that jurisdiction is:
 - (a) the rate set by the *third country countercyclical buffer authority* for that jurisdiction; or
 - (b) if that rate exceeds 2.5% and has not been recognised by the *FPC*, 2.5%.
- (8) If the *FPC* has not set a rate for a *third country* and either there is no *third country countercyclical buffer authority* for that country or the authority has not set a rate for that jurisdiction, the *countercyclical buffer rate* for an exposure located in that jurisdiction is zero.
- (9) If the rate for the *UK* is increased, that increase takes effect from the date specified by the *FPC*.
- (10) If the rate for an *EEA State* other than the *UK* is increased, subject to (5)(b) that increase takes effect from:
 - (a) the date specified by the *EEA countercyclical buffer authority* for that jurisdiction, if the rate applied under this Chapter does not exceed 2.5%;
 - (b) the date specified by the *FPC* if the rate applied under this Chapter exceeds 2.5%.
- (11) If the rate for a *third country* is increased by the *FPC*, that increase takes effect from the date specified by the *FPC*.
- (12) If the *FPC* does not set a rate for a *third country* and the rate for that *third country* is increased by the *third country countercyclical buffer authority* for that jurisdiction, subject to (7)(b) that increase takes effect from:
 - (a) the date 12 months after the date on which the increase was published by the *third country countercyclical buffer authority* in accordance with the relevant law the *third country*, if the rate applied under this Chapter does not exceed 2.5%;
 - (b) the date specified by the *FPC* if the rate applied under this Chapter exceeds 2.5%.
- (13) If a rate is reduced, that reduction takes effect immediately.

[Note: Art 140 of the CRD.]

3.2 This rule applies until 31 December 2015

- (1) A *firm* must calculate a *countercyclical capital buffer of common equity tier 1 capital* equal to its *total risk exposure amount* multiplied by the weighted average of the *countercyclical buffer rates* that apply in the jurisdictions where the *firm's relevant credit exposures* are located.
- (2) In order to calculate the weighted average referred to in (1), a *firm* must apply to each applicable *countercyclical buffer rate* its total *own funds* requirements for credit risk, specific risk, incremental default and migration risk that relates to the *relevant credit exposures* in the jurisdiction in question, divided by its total *own funds* requirements for credit risk that relates to all of its *relevant credit exposures*.
- (3) For the purposes of (2), *firm* must calculate its total *own funds* requirement for credit risk, specific risk, incremental default and migration risk in accordance with Part Three, Titles II and IV of the *CRR*.

- (4) The *countercyclical buffer rate* for an exposure is the rate recognised or set by the *FPC* for the jurisdiction in which that exposure is located.
- (5) If the *FPC* does not recognise or set a rate for the jurisdiction in which an exposure is located, the *countercyclical buffer rate* for that exposure is zero.
- (6) If the rate recognised or set by the *FPC* for a jurisdiction is increased, that increase takes effect from the date specified by the *FPC*.
- (7) If a rate is reduced, that reduction takes effect immediately.

[Note: Art 160(6) (part) of the CRD]

4 CAPITAL CONSERVATION MEASURES

Combined buffer

- 4.1 A *firm* does not meet the *combined buffer* if the *common equity tier 1 capital* maintained by the *firm* which is not used to meet the *own funds* requirement under Article 92(1)(c) of the *CRR* does not meet the *combined buffer*.

[Note: Art 129(5) (part) and 130(5) (part) of the CRD]

Restrictions on distributions

- 4.2 A *firm* that meets the *combined buffer* must not make a *distribution in connection with common equity tier 1 capital* to an extent that would decrease its *common equity tier 1 capital* to a level where the *combined buffer* is no longer met.

[Note: Art 141(1) of the CRD]

- 4.3 (1) A *firm* that does not meet the *combined buffer* must:
 - (a) calculate the *MDA* in accordance with (4); and
 - (b) report the *MDA* to the *PRA* in writing no later than 5 working days after the *firm* identified that it did not meet the *combined buffer*.
- (2) A *firm* that does not meet the *combined buffer* must not undertake any of the following actions before it has calculated the *MDA*:
 - (a) make a *distribution in connection with common equity tier 1 capital*;
 - (b) create an obligation to pay variable remuneration or *discretionary pension benefits* or pay variable remuneration or *discretionary pension benefits* if the obligation to pay was created at a time when the *firm* did not meet the *combined buffer*; and
 - (c) make payments on *additional tier 1 instruments*.
- (3) If a *firm* does not meet the *combined buffer*, it must not distribute more than the *MDA* calculated in accordance with (4) through any action referred to in points (a) to (c) of (2).
- (4) A *firm* must calculate the *MDA* by multiplying the sum calculated in accordance with (5) by the factor determined in accordance with (6). The *MDA* shall be reduced by any of the actions referred to in point (a), (b) or (c) of (2)..
- (5) The sum to be multiplied in accordance with (4) shall consist of:

- (a) interim profits not included in *common equity tier 1 capital* pursuant to Article 26(2) of the *CRR* that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in points (a), (b) or (c) of (2);
- plus
- (b) year-end profits not included in *common equity tier 1 capital* pursuant to Article 26(2) of the *CRR* that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in points (a), (b) or (c) of (2);
- minus
- (c) amounts which would be payable by tax if the items specified in points (a) and (b) were to be retained.

(6) The factor referred to in (4) shall be determined as follows:

- (a) if the *common equity tier 1 capital* maintained by the *firm* which is not used to meet the *own funds* requirement under Article 92(1)(c) of the *CRR* expressed as a percentage of the *firm's total risk exposure amount*, is within the first (that is, the lowest) quartile of the *combined buffer*, the factor shall be 0;
- (b) if the *common equity tier 1 capital* maintained by the *firm* which is not used to meet the *own funds* requirement under Article 92(1)(c) of the *CRR*, expressed as a percentage of the *firm's total risk exposure amount*, is within the second quartile of the *combined buffer*, the factor shall be 0.2;
- (c) if the *common equity tier 1 capital* maintained by the *firm* which is not used to meet the *own funds* requirement under Article 92(1)(c) of the *CRR* expressed as a percentage of the *firm's total risk exposure amount* is within the third quartile of the *combined buffer*, the factor shall be 0.4; and
- (d) if the *common equity tier 1 capital* maintained by the *firm* which is not used to meet the *own funds* requirement under Article 92(1)(c) of the *CRR* expressed as a percentage of the *firm's total risk exposure amount*, is within the fourth (that is, the highest) quartile of the *combined buffer*, the factor shall be 0.6.

(7) A *firm* must calculate the lower and upper bounds of each quartile of the *combined buffer* as follows:

Lower bound of quartile

$$= \frac{\text{Combined buffer}}{4} \times (Q_n - 1)$$

Upper bound of quartile

$$= \frac{\text{Combined buffer}}{4} \times Q_n$$

"Qn" indicates the ordinal number of the quartile concerned.

- (8) The restrictions imposed by this rule only apply to payments that result in a reduction of *common equity tier 1 capital* or in a reduction of profits, and where a suspension of payment or failure to pay does not constitute an event of default or a condition for the commencement of proceedings for an order for the appointment of a liquidator or administrator of the *firm*.
- (9) If a *firm* does not meet the *combined buffer* and intends to distribute any of its distributable profits or undertake an action referred to in points (a), (b) and (c) of (2) it must give the *PRA* notice of its intention at least one month before the intended date of distribution or action

unless there are exceptional circumstances which make it impracticable to give such a period of notice in which event the firm must give as much notice as is practicable in those circumstances. When giving notice a *firm* must provide the following information:

- (a) the amount of *own funds* maintained by the *firm*, subdivided as follows:
 - (i) *common equity tier 1 capital*;
 - (ii) *additional tier 1 capital*; and
 - (iii) *tier 2 capital*.
- (b) the amount of its interim and year-end profits;
- (c) the *MDA* calculated in accordance with (4);
- (d) the amount of distributable profits it intends to allocate between the following:
 - (i) dividend payments;
 - (ii) share buybacks;
 - (iii) payments on *additional tier 1 instruments*; and
 - (iv) the payment of variable remuneration or *discretionary pension benefits*, whether by creation of a new obligation to pay, or payment pursuant to an obligation to pay created at a time when the *firm* did not meet its *combined buffer*.

(10)A *firm* must maintain arrangements to ensure that the amount of distributable profits and the *MDA* are calculated accurately and must be able to demonstrate that accuracy to the *PRA* on request.

[Note: Art 141(2) to 141(10) of the CRD]

Capital conservation plan

4.4 When a *firm* does not meet the *combined buffer*, it must prepare a capital conservation plan and submit it to the *PRA* no later than 5 working days after the *firm* identified that it did not meet the *combined buffer*.

[Note: Art 142(1) of the CRD]

4.5 The capital conservation plan must include the following:

- (1) the *MDA*;
- (2) estimates of income and expenditure and a forecast balance sheet;
- (3) measures to increase the capital ratios of the *firm*; and
- (4) a plan and timeframe for the increase of *own funds* with the objective of meeting the *combined buffer*.

[Note: Art 142(2) of the CRD]

5 APPLICATION ON AN INDIVIDUAL AND CONSOLIDATED BASIS

Application on an individual basis

- 5.1 This Part applies to a *firm* on an individual basis whether or not it also applies to the *firm* on a *consolidated basis* or *sub-consolidated basis*.

Application on a consolidated basis

- 5.2 A *firm* which is a *parent institution in a Member State* must comply with this Part on the basis of its *consolidated situation*.
- 5.3 A *UK bank* or *building society* controlled by a *parent financial holding company in a Member State* or a *parent mixed financial holding company in a Member State* must comply with this Part on the basis of the *consolidated situation* of that holding company, if the *PRA* is responsible for supervision of the *UK bank* or *building society* on a *consolidated basis* under Article 111 of the *CRD*.
- 5.4 A *UK designated investment firm* controlled by a *parent financial holding company in a Member State* or a *parent mixed financial holding company in a Member State* must comply with this Part on the basis of the *consolidated situation* of that holding company, if:
- (1) there is no *subsidiary* of the holding company which is a *credit institution*; and
 - (2) the *PRA* is responsible for the supervision of the *UK designated investment firm* on a *consolidated basis* under Article 111 of the *CRD*.

Sub-consolidation in cases of entities in third countries

- 5.5 A *firm* that is a *subsidiary* must apply this Part on a *sub-consolidated basis* if the *firm*, or the *parent undertaking* where it is a *financial holding company* or *mixed financial holding company*, have an *institution* or *financial institution* as a *subsidiary* in a *third country* or hold a *participation* in such an *institution* or *financial institution*.

Extent and manner of prudential consolidation

- 5.6 If this Part applies to a *firm* on a *consolidated basis* or on a *sub-consolidated basis*, the *firm* must carry out consolidation to the extent and in the manner prescribed in Articles 18(1), 18(8), 19(1), 19(3), 23 and 24(1) of the *CRR* and Groups 2.1-2.3.

[Note: Art 129(1) (part) and 130(1) (part) of the *CRD*]



Part

CAPITAL BUFFERS

Externally defined glossary terms

Term	Definition source
<i>additional tier 1 capital</i>	<i>Article 61 CRR</i>
<i>additional tier 1 instruments</i>	<i>Article 52 CRR</i>
<i>common equity tier 1 capital</i>	<i>Article 50 CRR</i>
<i>consolidated basis</i>	<i>Article 4(1)(48) CRR</i>
<i>consolidated situation</i>	<i>Article 4(1)(47) CRR</i>
<i>discretionary pension benefits</i>	<i>Article 4(1)(73) CRR</i>
<i>EEA State</i>	<i>s425 FSMA</i>
<i>financial holding company</i>	<i>Article 4(1)(20) CRR</i>
<i>financial institution</i>	<i>Article 4(1)(26) CRR</i>
<i>institution</i>	<i>Article 4(1)(3) CRR</i>
<i>mixed financial holding company</i>	<i>Article 4(1)(21) CRR</i>
<i>own funds</i>	<i>Article 4(1)(118) CRR</i>
<i>parent undertaking</i>	<i>Article 4(1)(15) CRR</i>
<i>participation</i>	<i>Article 4(1)(35) CRR</i>
<i>securitisation</i>	<i>Article 4(1)(61) CRR</i>
<i>sub-consolidated basis</i>	<i>Article 4(1)(49) CRR</i>
<i>subsidiary</i>	<i>Article 4(1)(16) CRR</i>
<i>tier 2 capital</i>	<i>Article 71 CRR</i>
<i>trading book</i>	<i>Article 4(1)(86) CRR</i>