Ordinance No 8
of the BNB
of 24 April 2014
on Banks' Capital Buffers

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Chapter One
General Provisions

Subject

Article 1. (1) This Ordinance shall define the types of capital buffers and the conditions and procedures for their formation and updating.

(2) This Ordinance shall also establish:

1. the restrictions on the payment of dividends or interest payments in respect of own funds;

2. the conditions for mandatory loss absorbtion by shareholders and holders of own funds instruments of the bank before covering the losses from other sources;

3. other restrictions that banks have to comply with in case of a failure to meet the capital buffers requirements or in order to prevent such a failure.

Types of Buffers

Article 2. (1) Capital buffers shall be:

1. the capital conservation buffer;

2. the bank-specific countercyclical capital buffer;

3. the buffer for global systemically important institutions (G-SIIs);

4. the buffer for other systemically important institutions (O-SIIs);

5. the systemic risk buffer.

(2) The buffers under paragraph 1, items 1, 2, 4 and 5 shall apply on an individual and consolidated basis in accordance with Part One, Title II of 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 (OJ, L176/1 of 27 June 2013), hereinafter referred to as 'Regulation (EU) No 575/2013', and the buffer under item 3 shall only apply on a consolidated basis.

(3) Where a bank fails to meet the requirements for maintaining the buffers under this Ordinance, it shall be subject to the restrictions set out in Article 16.

Chapter Two

Capital Conservation Buffer and Institution-specific Countercyclical Capital Buffer

Section One

Capital Conservation Buffer

Article 3. (1) Banks shall maintain a capital conservation buffer of Common Equity Tier 1 capital equal to 2.5 per cent of the total risk exposure amount.

(2) The Common Equity Tier 1 capital under paragraph 1 can not be used for meeting the own funds requirement under Article 92 of Regulation (EU) No. 575/2013, as well as for meeting the requirements imposed by Article 103, paragraph 2, item 5 of the Law on Credit Institutions (LCI).

Section II

Institution-specific Countercyclical Capital Buffer

General Requirement

Article 4. (1) Each bank shall maintain a bank-specific countercyclical capital buffer, equivalent to its total risk exposure amount, multiplied by the weighted average of the countercyclical buffer rates calculated in accordance with Article 6, paragraph 3.

(2) The Common Equity Tier 1 capital under paragraph 1 can not be used for meeting the own funds requirement under Article 92 of Regulation (EU) No. 575/2013, the requirement to maintain a capital conservation buffer, as well as for meeting the requirements imposed by Article 103, paragraph 2, item 5 of the LCI.

Setting the Countercyclical Buffer Rate

Article 5. (1) The Bulgarian National Bank shall calculate quarterly the level of the reference indicator supporting the judgment in setting the countercyclical buffer rate in accordance with paragraph 3.

(2) The reference indicator shall reflect the credit cycle and the risks due to the excess credit growth in the country and shall duly take into account specificities of the national economy. The indicator shall be based on the deviation of the credit-to-GDP ratio from its long-term trend, taking into account:

1. the indicator of credit growth levels in Bulgaria and, in particular, the indicator reflective of the changes in the ratio of credit granted to GDP;

2. European Systemic Risk Board (ESRB) general guidance on the measurement and calculation of the deviation from the long-term trend of the ratio of credit to GDP and on setting the indicators for calculation of the buffer.

(3) The Bulgarian National Bank shall assess and set the appropriate countercyclical buffer rate for banks in the country on a quarterly basis, and in doing so shall take into account:

1. the reference indicator, calculated in accordance with paragraph 2;

2. ESRB principles on the judgment of the appropriate level of the countercyclical buffer, guidance on variables that indicate the build-up of system-wide risks, including qualitative criteria which indicate that the buffer should be maintained, modified or fully released and other recommendations of the ESRB for setting the buffer rate;

3. other variables that the BNB deems appropriate to reflect the cyclical systemic risk.

(4) The countercyclical buffer rate applicable to credit risk exposures in Bulgaria shall be set by the BNB as a percentage between 0 per cent and 2.5 per cent of the total amount of these exposures, calibrated in steps of multiples of 0.25 percentage points. Based on the assessment under paragraph 3, the BNB may set a countercyclical buffer rate in excess of 2.5 per cent of the total risk exposure amount.

(5) Where the BNB sets the countercyclical buffer rate above zero for the first time, or where, thereafter, increases it, the BNB shall also indicate the date from which each bank must apply the increased buffer. This date shall be no later than 12 months after the date when the increased buffer setting is announced in accordance with paragraph 7. If this date is before the 12-month period, the BNB shall justify this on the basis of relevant exceptional circumstances.

(6) If the BNB reduces the existing countercyclical buffer rate, it shall determine the period during which no increase in the buffer is expected. This period shall not be binding for the BNB.

(7) The Bulgarian National Bank shall announce the quarterly setting of the countercyclical buffer rate by publication on its official website. The announcement shall include at least the following:

1. the applicable countercyclical buffer rate;

2. the relevant credit-to-GDP-ratio and its deviation from the long-term trend;

3. the reference indicator calculated in accordance with paragraph 1;

4. a justification for the buffer rate;

5. where the buffer rate is increased – the date from which banks must apply the increased buffer rate for the purposes of calculating their bank-specific countercyclical capital buffer;

6. where the period referred to in item 5 is less than 12 months after the date of the announcement under this paragraph – a reference to the exceptional circumstances that justify the shorter deadline for application;

7. where the buffer rate is decreased – the period during which no increase in the buffer rate is expected, together with a justification for this period.

(8) The Bulgarian National Bank shall coordinate the timing of the announcement under paragraph 7 with the designated authorities of the other Member States.

(9) The Bulgarian National Bank shall notify each quarterly setting of the countercyclical buffer rate and the information specified under paragraph 7 to the ESRB.

Calculation of the Bank-specific Countercyclical Capital Buffer Rate

Article 6. (1) The bank-specific countercyclical capital buffer rate shall be applied to the exposure classes referred to in points (g) to (q) of Article 112 of Regulation (EU) No 575/2013, that are subject to:

1. capital requirements for credit risk under Part Three, Title II of Regulation (EU) No 575/2013; or

2. capital requirements for specific risk under Part Three, Title IV, Chapter 2 of Regulation (EU) No 575/2013 or incremental default and migration risk under Part Three, Title IV, Chapter 5 of Regulation (EU) No 575/2013, when the exposure is part of the trading book; or

3. capital requirements under Part Three, Title II, Chapter 5 of Regulation (EU) No 575/2013, when the exposure is a securitisation position.

(2) The bank-specific countercyclical capital buffer is a weighted average of the countercyclical buffer rates that apply in the jurisdictions where the relevant exposures under paragraph 1 are located or are applied in accordance with Article 8, paragraphs 1, 2 and 3.

(3) The weighted average under paragraph 2 shall be calculated as the capital requirements for credit risk, calculated for the exposures under paragraph 1 in the relevant jurisdictions, are multiplied by the applicable countercyclical buffer rates for these jurisdictions and the resulting multiplications are summed. This value is then divided by the total capital requirements for the exposures under paragraph 1.

(4) If an authority of a Member State or a third country sets a countercyclical buffer rate in excess of 2.5 per cent of the total risk exposure amount, the banks licensed in the Republic of Bulgaria shall apply a countercyclical buffer rate of 2.5 per cent of the exposure amount under paragraph 1 in this Member State unless the BNB has recognised the set buffer rate.

(5) Paragraph 4 shall apply for the purposes of the calculation of own funds requirements on a consolidated basis.

(6) Banks shall identify the geographical location of the relevant credit exposure in accordance with regulatory technical standards adopted by the European Banking Authority (EBA).

(7) For the purposes of the calculation required under paragraph 2, when increasing the buffer rate:

1. the countercyclical buffer rate for the Republic of Bulgaria shall apply from the date specified in the information disclosed in accordance with Article 5, paragraph 7, item 5;

2. the countercyclical buffer rate in excess of 2.5 per cent for another Member State shall apply from the date specified in the information disclosed by the BNB in accordance with Article 7, paragraph 2, item 3;

3. the countercyclical buffer rate of up to 2.5 per cent in another Member State shall apply from the date specified in the information disclosed by the authority responsible for setting the countercyclical buffer rate of the other Member State;

4. where the BNB sets the countercyclical buffer rate for a third country pursuant to Article 8, paragraphs 1 to 3 or recognises the countercyclical buffer rate for a third country in accordance with Article 7, this buffer rate shall apply from the date specified in the information published pursuant to Article 8, paragraph 5, item 3 or Article 7, paragraph 2, item 3;

5. in the cases other than those in item 4, the countercyclical buffer rate for a third country shall apply 12 months after the date on which the change in the buffer rate was announced by the relevant third-country authority, irrespective of whether that authority requires banks incorporated in that third country to apply the change within a shorter period; the change in the countercyclical buffer rate for a third country shall be considered to be announced on the date that it is published by the relevant third-country authority in accordance with the applicable national legislation.

(8) The countercyclical buffer rate shall apply immediately if the effect of this decision is to reduce the buffer rate.

Recognition of a Countercyclical Buffer Rate in Excess of 2.5 Per Cent

Article 7. (1) Where the authority responsible for setting the countercyclical buffer rate of a Member State or third country has set a countercyclical buffer rate in excess of 2.5 per cent of the total risk exposure amount, the BNB may recognise this buffer rate in terms of exposures of banks in this country.

(2) Where the BNB recognises a buffer rate under paragraph 1, it shall announce on its official website at least the following information:

1. the applicable countercyclical buffer rate;

2. the Member State or third country to which this buffer applies;

3. where the buffer rate is increased – the date from which banks must apply the increased buffer rate;

4. where the period referred to in item 3 is less than 12 months after the date of the announcement – a reference to the exceptional circumstances that require this shorter deadline for application.

Decisions of the BNB on Third Country Countercyclical Buffer Rates

Article 8. (1) Where a countercyclical buffer rate has not been set and published by the relevant third-country authority for a third country to which banks licensed in the Republic of Bulgaria have exposures, the BNB may set the countercyclical buffer rate that banks must apply for the purposes of the calculation of their bank-specific countercyclical capital buffer.

(2) Where a countercyclical buffer rate has been set and published by the relevant third-country authority, the BNB may set a different buffer rate for that third country, which banks shall apply, if it considers that the buffer rate set by the relevant third-country authority is not sufficient to protect banks licensed in the Republic of Bulgaria from the risks of excessive credit growth in this country.

(3) When exercising its powers under paragraph 2, the BNB shall not set a countercyclical buffer rate below the level set by the relevant third-country authority unless this buffer rate exceeds 2.5 per cent of the total risk exposure amount in the third country.

(4) Where the BNB sets a countercyclical buffer rate for a third country pursuant to paragraphs 1, 2 or 3, which increases the existing applicable countercyclical buffer rate, the BNB shall decide the date from which banks licensed in the Republic of Bulgaria must apply the buffer rate for the purposes of calculating their bank-specific countercyclical capital buffer. This date shall be not later than 12 months after the announcement of the increased buffer under paragraph 5. If this date is before the 12-month period, the BNB shall justify this on the basis of the relevant exceptional circumstances.

(5) The Bulgarian National Bank shall publish on its official website the setting of a countercyclical buffer rate for a third country pursuant to paragraphs 1, 2 and 3 and shall include the following information:

1. the countercyclical buffer rate and the third country to which it applies;
2. a justification for the buffer rate;
3. where the buffer rate is set above zero for the first time or where it is increased – the date from which banks must apply the increased buffer rate;
4. where the period referred to in item 3 is less than 12 months after the date of the publication – a reference to the exceptional circumstances that require the shorter deadline for application.

Chapter Three

Buffers for Global Systemically Important Institutions and Other Systemically Important Institutions

General Provisions

Article 9. (1) The Bulgarian National Bank may identify on a consolidated basis a global systemically important institution (G-SII), and, on an individual or consolidated basis, an other systemically important institution (O-SII) according to the methodology under paragraph 4.

(2) The G-SII or O-SII shall be:

1. an European Union (EU) parent institution;
2. an EU parent financial holding company;
3. an EU parent mixed financial holding company; or
4. a bank.

(3) A global systemically important institution shall not be an institution that is a subsidiary of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company.

(4) The identification methodology for a G-SII shall be based on the following criteria:

1. the size of the group;
2. the interconnectedness of the group with the financial system;
3. the substitutability of the services or of the financial infrastructure provided by the group;
4. the complexity of the group;
5. the cross-border activity of the group, including the cross-border activity between Member States and between a Member State and a third country.

(5) Each criterion under paragraph 4 shall receive an equal weighting and shall consist of quantifiable indicators.

(6) The methodology shall provide an overall score for each assessed entity and allow each G-SII to be identified and allocated into a specific sub-category according to Article 10, paragraphs 2 to 6.

(7) The Bulgarian National Bank shall identify the systemic importance of an O-SII on the basis of at least one of the following criteria:

1. the size;
2. the importance for the economy of the Republic of Bulgaria or for the EU;
3. the significance of cross-border activities;
4. the interconnectedness of the institution or group with the financial system.

(8) The Bulgarian National Bank shall review annually the identification of G-SIIs and O-SIIs and the G-SIIs allocation into the respective sub-categories and report the results to the systemically important institution concerned, to the European Commission (EC), the ESRB and the EBA and shall disclose the updated list of identified systemically important institutions and the sub-category into which each identified G-SII is allocated.

(9) Systemically important credit institutions shall not use Common Equity Tier 1 capital that is maintained to meet the requirements of Article 10, paragraph 1 and Article 11, paragraph 1 of this Ordinance to meet the own funds requirement under Article 92 of Regulation (EU) No 575/2013, to meet the requirements for capital buffers under Articles 3 and 4 of this Ordinance and to meet the requirements imposed under Article 103, paragraph 2, item 5 of the LCI.

G-SII Buffer

Article 10. (1) Each bank, identified as a G-SII on a consolidated basis, shall maintain a mandatory G-SII buffer which shall correspond to the sub-category to which it is allocated. This buffer shall consist of Common Equity Tier 1 capital and shall be supplementary to the Common Equity Tier 1, which meets the requirement under Article 92, paragraph 3 of Regulation (EU) No 575/2013.

(2) There shall be at least five sub-categories of G-SII.

(3) The lowest boundary and the boundaries between the relevant sub-categories shall be determined by the scores under the identification methodology.

(4) The cut-off scores between adjacent sub-categories shall be defined clearly and shall adhere to the principle that there is a constant linear increase of systemic

significance, between each sub-category resulting in a linear increase in the additional requirement of Common Equity Tier 1 capital, with the exception of the highest sub-category. The systemic significance is the expected impact exerted by the G-SII's distress on the global financial market.

(5) For the lowest sub-category, a G-SII buffer of 1 per cent of the total risk exposure amount shall be assigned, and the buffer assigned to each sub-category shall increase in gradients of 0.5 per cent of the total risk exposure amount up to and including the fourth sub-category.

(6) The highest sub-category of the G-SII buffer shall be subject to a buffer of 3.5 per cent of the total risk exposure amount.

(7) In the exercise of the supervisory judgment, the BNB may:

1. re-allocate a G-SII from a lower sub-category to a higher sub-category;

2. allocate an entity as referred to in Article 9, paragraph 2, that has an overall score that is lower than the cut-off score of the lowest sub-category, to the lowest or the higher sub-category, thereby designating it as a G-SII.

(8) The Bulgarian National Bank shall notify the EBA of the decisions made under paragraph 7, item 2, providing its reasons.

(9) The Bulgarian National Bank shall communicate to the European Commission, the ESRB and the EBA and shall disclose:

1. the names of the identified G-SIIs and the respective sub-categories to which each G-SII is allocated;

2. the names of the identified O-SIIs.

O-SII Buffer

Article 11. (1) The Bulgarian National Bank may require each O-SII, on a consolidated or individual basis, as applicable, to maintain an O-SII buffer of up to 2 per cent of the total risk exposure amount. That buffer shall consist of Common Equity Tier 1 capital and shall be supplementary to the Common Equity Tier 1, which meets the requirement of Article 92, paragraph 3 of Regulation (EU) No 575/2013.

(2) The setting of O-SII buffers must not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or the EU as a whole and must not create an obstacle to the functioning of the internal market. The O-SII buffer shall be reviewed by the BNB at least annually.

(3) A month before the disclosure of the decision under paragraph 1 for setting or changing the O-SII buffer, the BNB shall notify the European Commission, the ESRB, the EBA and the competent and designated authorities of the Member States concerned. The notification shall describe in detail:

1. the justification for why the O-SII buffer is considered likely to be effective and proportionate to mitigate the risk;

2. an assessment of the likely positive or negative impact of the O-SII buffer on the internal market, based on the information available;

3. the O-SII buffer rate that the BNB intends to set.

(4) Where an O-SII is a subsidiary of either a G-SII or an O-SII, which is an EU parent institution and subject to an O-SII buffer on a consolidated basis, the buffer that applies at an individual level for the subsidiary shall not exceed the higher of the two values:

1. 1 per cent of the total risk exposure amount; and
2. the G-SII or O-SII buffer rate applicable to the group at a consolidated level.

Chapter Four

Systemic Risk Buffer

General Requirements

Article 12. (1) The Bulgarian National Bank shall introduce a systemic risk buffer of Common Equity Tier 1 capital in order to prevent and mitigate the effect of long-term non-cyclical systemic or macroprudential risks not covered by Regulation (EU) No 575/2013, which could cause disruption in the financial system and serious negative consequences to it and the real economy in the Republic of Bulgaria.

(2) The buffer under paragraph 1 is in the amount of not less than 1 per cent of the exposures amount under paragraph 4, to which it applies.

(3) The Common Equity Tier 1 capital under paragraph 1 shall not be used to meet the own funds requirement under Article 92 of Regulation (EU) No 575/2013, the requirement to maintain a capital conservation buffer and a countercyclical capital buffer, as well as to meet the requirements imposed under Article 103, paragraph 2, item 5 of the LCI.

(4) The systemic risk buffer shall apply to exposures in the Republic of Bulgaria, and in the exercise of the supervisory judgment by the BNB, it shall apply to exposures in third countries. The systemic risk buffer may also apply to exposures located in other Member States under Article 13, paragraphs 4 and 6.

(5) The systemic risk buffer shall apply to all banks or any part thereof and shall be set in gradual or accelerated steps of multiples of 0.5 percentage points. Different requirements may be introduced for different banks.

(6) In determining the requirement for maintaining a systemic risk buffer, the BNB shall ensure that this does not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the EU as a whole and does not create an obstacle to the functioning of the internal market. The Bulgarian National Bank shall review the set buffer at least every second year.

(7) A month before the publication of the decision referred to in Article 13, paragraph 5 for setting a systemic risk buffer rate of up to 3 per cent, the BNB shall notify the European Commission, the ESRB, the EBA and the competent and designated authorities of the Member States concerned. If the buffer applies to exposures located in third countries, the BNB shall also notify the supervisory authorities of these countries. The notification shall describe in detail:

1. the systemic or macroprudential risk in the Republic of Bulgaria;

2. the reasons why the levels of the systemic or macroprudential risks threaten the stability of the financial system of the Republic of Bulgaria, which justifies the set systemic risk buffer;

3. the justification why the systemic risk buffer is considered likely to be effective and proportionate to mitigate the risk;

4. an assessment of the possible positive or negative impact of the systemic risk buffer on the internal market, based on the available information;

5. the justification why none of the existing measures in the LCI and in Regulation (EU) No 575/2013, excluding Articles 458 and 459 thereof, will be sufficient to address the identified macroprudential or systemic risk taking into account the relative effectiveness of these measures;

6. the systemic risk buffer rate that the BNB intends to set.

(8) Paragraph 7 shall also apply in setting a systemic risk buffer rate of above 3 per cent, in which case the notification shall be carried out before any setting of the buffer.

Setting of a Systemic Risk Buffer between 3 Per Cent and 5 Per Cent

Article 13. (1) In the cases where the BNB sets a systemic risk buffer rate above 3 per cent but not more than 5 per cent, that applies to exposures located in the Republic of Bulgaria, as well as to exposures in third countries, Article 12, paragraph 7 shall be appled. When setting a systemic risk buffer rate above 5 per cent, Article 12, paragraph 8 shall be complied with.

(2) When setting the buffer under paragraph 1, the BNB shall notify the European Commission and await its opinion before adopting the final decision. Where the opinion of the European Commission is negative, the BNB shall comply with this opinion or give reasons for not doing so.

(3) Where the bank is a subsidiary of a parent undertaking established in another Member State, the BNB shall notify that Member State, the European Commission and the ESRB about the buffer under paragraph 1. Where the authorities of the other Member State disagree with the proposed systemic risk buffer rate and when within one month of the notification the European Commission and the ESRB have provided a negative opinion, the BNB may refer the matter to the EBA and request its consideration under Article 19 of Regulation (EU) No 1093/2010. The Bulgarian National Bank shall postpone the decision to set a buffer for these exposures until the EBA has taken a decision.

(4) In the cases under paragraphs 1 to 3, the BNB shall apply the set buffer rate after the adoption by the European Commission of a relevant implementing act.

(5) The Bulgarian National Bank shall disclose the setting of the systemic risk buffer on its official website. The information shall include at least the following data:

1. the systemic risk buffer rate;

2. the banks to which the systemic risk buffer applies;

3. a justification for the systemic risk buffer, unless the disclosure of such information could jeopardise the stability of the financial system;

4. the date from which the banks must apply the setting or resetting of the systemic risk buffer; and

5. the countries where exposures located in these countries are recognised in the systemic risk buffer.

(6) The Bulgarian National Bank may determine the systemic risk buffer to apply to all exposures under the terms of Article 12, paragraph 7. In this case, the BNB shall apply the same criteria and methodology for setting the buffer for all exposures within the EU.

Recognition of a Systemic Risk Buffer Rate

Article 14. (1) The Bulgarian National Bank may recognise the systemic risk buffer rate set in another Member State and require its application from the banks licensed in the Republic of Bulgaria for their exposures located in that Member State. In exercising its judgment, the BNB shall take into consideration the information presented by the relevant competent authority or designated authority that sets the buffer rate.

(2) The Bulgarian National Bank shall notify the European Commission, the ESRB, the EBA and the Member State that has set that systemic risk buffer rate of its decision under paragraph 1.

(3) The Bulgarian National Bank may ask the ESRB to issue a recommendation as referred to in Article 16 of Regulation (EU) No 1092/2010 to one or more Member States to recognise the systemic risk buffer rate set in accordance with Article 12 of this Ordinance.

Interaction between the Buffers for G-SII and O-SII and the Systemic Risk Buffer

Article 15. (1) Where an institution or group which has been identified as a systemically important credit institution which is subject to a G-SII buffer or an O-SII buffer on a consolidated basis in accordance with Article 9 is also subject to a systemic risk buffer on a consolidated basis in accordance with this Chapter, the higher of the buffers shall apply. Where a bank, on an individual basis, is subject to an O-SII buffer in accordance with Article 9 and a systemic risk buffer under this Chapter, the higher of the two shall apply.

(2) Where an institution must apply on an individual basis an O-SII buffer and a systemic risk buffer, it shall only apply the higher of them.

(3) Where the systemic risk buffer applies only to exposures located in the Republic of Bulgaria and is set in order to ensure coverage of the macroprudential risk in the country, the institution shall apply the systemic risk buffer in addition to the G-SII and O-SII buffer.

(4) Notwithstanding paragraph 1 where the systemic risk buffer applies to all exposures located in the Republic of Bulgaria that sets the requirement for this buffer to address the macroprudential risk in the country, but does not apply to exposures

outside the country, this systemic risk buffer shall be cumulative with the O-SII or G-SII buffer that is applied in accordance with Article 9.

(5) Where paragraph 1 applies and a bank is part of a group or a sub-group to which a G-SII or an O-SII belongs, the bank shall apply on an individual basis a combined buffer requirement, which is not lower than the sum of the capital conservation buffer, the countercyclical capital buffer and the higher of the O-SII buffer or the systemic risk buffer, which are applicable on an individual basis.

(6) Where paragraph 3 applies and an institution is part of a group to which a G-SII or an O-SII belongs, the institution shall apply on an individual basis a combined buffer requirement, which is not lower than the sum of the capital conservation buffer, the countercyclical capital buffer, the O-SII buffer and the systemic risk buffer, which are applicable on an individual basis.

Chapter Five
Restrictions on Distributions

Article 16. (1) A bank that meets the combined buffer requirement shall not make a distribution in connection with Common Equity Tier 1 capital to an extent that would decrease it to a level where the combined buffer requirement is no longer met.

(2) A bank that fails to meet the combined buffer requirement shall calculate the Maximum Distributable Amount ('MDA') in accordance with paragraph 3 and shall notify the BNB of its value. Before calculating the MDA, the bank shall not:

1. make distributions in connection with Common Equity Tier 1 capital;

2. create an obligation to pay variable remuneration or discretionary pension benefits within the meaning of Ordinance No 4 of the BNB on the Requirements for Remunerations in Banks, or to pay no variable remuneration if the obligation to pay was created at a time when the bank failed to meet the combined buffer requirement;

3. make payments on Additional Tier 1 instruments.

(3) While the bank fails to meet the combined buffer requirement, it shall not make a distribution through the actions referred to in paragraph 2, in an amount more than the MDA calculated in accordance with Annex I.

(4) The restrictions imposed by this Article shall only apply to distributions that result in a reduction of Common Equity Tier 1 capital or in a reduction of profits, when the suspension of payments or failure to pay does not constitute an event of default or a condition for the commencement of bankruptcy proceedings.

(5) Where the bank fails to meet the combined buffer requirement and intends to distribute any of its distributable profits or undertake any of the actions referred to in paragraph 2, it shall notify the BNB and provide the following information:

1. the amount of the capital maintained by the bank subdivided into Common Equity Tier 1 capital, Additional Tier 1 capital and Tier 2 capital;

2. the amount of its interim and year-end profit;

3. the MDA calculated in accordance with Annex I;

4. the amount of distributable profits, which the bank intends to allocate in the form of:

a) dividend payments;

b) share buybacks;

c) payments on Additional Tier 1 instruments;

d) payments of variable remuneration or discretionary pension benefits, whether by creation of a new obligation to pay, or in pursuance of a previous obligation to pay created at a time when the bank failed to meet its combined buffer requirement.

(6) Each bank shall maintain arrangements to ensure that the amount of distributable profits and the MDA are calculated accurately, and shall be able to provide them upon request by the BNB.

(7) For the purposes of paragraphs 1 and 2, a distribution in connection with Common Equity Tier 1 capital shall include:

1. a payment of cash dividends;

2. a distribution of fully or partly paid own funds instruments, including those referred to in Article 26, paragraph 1, point (a) of Regulation (EU) No 575/2013;

3. a redemption or purchase by a bank of its own shares or other capital instruments referred to in Article 26, paragraph 1, point (a) of Regulation (EU) No. 575/2013;

4. a repayment of amounts paid up in connection with the capital instruments referred to in Article 26, paragraph 1, point (a) of Regulation (EU) No. 575/2013;

5. a distribution of items referred to in Article 26, paragraph 1, points (b) to (e) of Regulation (EU) No 575/2013.

Chapter Six

Capital Conservation Plan

Article 17. (1) Where a bank fails to meet the combined buffer requirement, it shall prepare a capital conservation plan and submit it to the BNB no later than five working days after it identified the failure to meet this requirement.

(2) The capital conservation plan shall include:

1. estimates of income and expenditure and a forecast balance sheet;

2. measures, a plan and a timeframe for the increase of own funds with the objective of meeting fully the combined buffer requirement;

3. other information that the BNB considers to be necessary to carry out the assessment required by paragraph 3.

(3) The Bulgarian National Bank shall approve the capital conservation plan only if it considers that its implementation would ensure maintaining or raising sufficient capital to enable the bank to meet the combined buffer requirement within a reasonable time.

Chapter Seven

Loss Absorption by Holders of Own Funds Instruments

Article 18. (previous paragraph 1; amended; Darjaven Vestnik, issue 63 of 2017) Where in case of an emergency situation, public financial support is granted to a bank by the Ministry of Finance or other designated authority, the BNB shall require from the bank as a precondition its shareholders and holders of own funds instruments to have absorbed all losses but not more than the amount of their holding in the own funds.

(2) (repealed; Darjaven Vestnik, issue 63 of 2017).

Additional Provisions

§ 1. Within the meaning of this Ordinance:

1. 'Common Equity Tier 1 capital' shall be the Common Equity Tier 1 capital as defined in Article 50 of Regulation (EU) No 575/2013;

2. 'Institution' shall be an institution as defined in Article 4, paragraph 1, point 3 of Regulation (EU) No 575/2013;

3. 'Combined buffer requirement' shall be the total amount of Common Equity Tier 1 capital which is necessary to meet the requirement for the capital conservation buffer extended by the following, as applicable:

a) the bank-specific countercyclical capital buffer;

b) the G-SII buffer;

c) the O-SII buffer;

d) the systemic risk buffer;

4. 'Countercyclical buffer rate' shall be the rate that the bank must apply in order to calculate its bank-specific countercyclical capital buffer, and that is set in accordance with Articles 5, 7 and 8 or by the relevant third-country authority, as the case may be;

5. 'Total risk exposure amount' shall be the total risk exposure amount calculated in accordance with Article 92, paragraph 3 of Regulation (EU) No. 575/2013;

6. 'Designated Authority' shall be a public authority or body of a Member State as defined in Article 136, paragraph 1 of Directive 2013/36/EU of the European Parliament and of 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;

7. 'Reference indicator' shall be a benchmark buffer calculated in accordance with the ESRB guidance on setting the countercyclical buffer rate.

§ 2. This Ordinance transposes into the Bulgarian legislation the requirements of Directive 2013/36/EU of the European Parliament and of 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.

Transitional and Final Provisions

§ 3. This Ordinance is issued on the grounds of Article 39, paragraph 2 in connection with § 13 of the Transitional and Final Provisions of the Law on Credit Institutions, and is adopted by Resolution No 50 of 24 April 2014 of the Governing Council of the Bulgarian National Bank.

§ 4. (1) The Bulgarian National Bank shall notify the competent or the designated authorities of the Member States concerned, the European Commission, the ESRB, the EBA and the respective colleges of supervisors of the capital conservation buffer rates applicable in the period from 2014 to 2018.

(2) The Bulgarian National Bank may recognise the capital conservation buffer rates and countercyclical capital buffer rates above the minimum rates permissible under Article 160 of Directive 2013/36/EU and set for the 2014 to 2018 period by other Member States. In this case, the BNB shall notify the European Commission, the ESRB, the EBA and the relevant colleges of supervisors.

§ 5. Article 5 shall enter into force on 1 January 2016 as:

1. for the period from 1 January 2016 to 31 December 2016, the bank-specific countercyclical capital buffer shall not be set at a rate higher than 0.625 per cent of the total amount of risk-weighted exposure amounts;

2. for the period from 1 January 2017 to 31 December 2017, the bank-specific countercyclical capital buffer shall not be set at a rate higher than 1.25 per cent of the total amount of risk-weighted exposure amounts;

3. for the period from 1 January 2018 to 31 December 2018, the bank-specific countercyclical capital buffer shall not be set at a rate higher than 1.875 per cent of the total amount of risk-weighted exposure amounts.

§ 6. Article 13, paragraph 1 shall enter into force on 1 January 2015.

§ 7. The Deputy Governor heading the Banking Supervision Department shall issue mandatory instructions on the enactment of this Ordinance.

§ 8. At the proposal of the Deputy Governor heading the Banking Supervision Department, the BNB Governing Council shall set, where applicable, the buffer rates under this Ordinance.

Annex 1
to Article 16, paragraph 3

Computation Procedure for Determining the MDA

1. Each bank shall calculate the MDA by multiplying the sum under item 2 by the factor determined in accordance with item 3. The Maximum Distributable Amount shall be reduced by any of the actions referred to in Article 16, paragraph 2.

2. The sum under item 1 is formed as the value for (c) is deducted from the sum of points (a) and (b):

a) interim profits not included in Common Equity Tier 1 capital pursuant to Article 26, paragraph 2 of Regulation (EU) No 575/2013 that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in Article 16, paragraph 2;

b) year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26, paragraph 2 of Regulation (EU) No 575/2013 that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in Article 16, paragraph 2;

c) amounts which would be payable by taxes if for the items specified in points (a) and (b) these have not been charged.

3. Where the Common Equity Tier 1 capital maintained by the bank which is not used for covering the own funds requirements under Article 92, paragraph 1, point (c) of Regulation (EU) No 575/2013 covers:

a) up to 25 per cent of the combined buffer requirement, the factor under item 1 shall be 0;

b) more than 25 per cent but not more than 50 per cent of the combined requirement for the buffer, the factor under item 1 shall be 0.2;

c) more than 50 per cent but not more than 75 per cent of the combined requirement for the buffer, the factor under item 1 shall be 0.4;

d) more than 75 per cent of the combined buffer requirement, the factor under item 1 shall be 0.6.

Ordinance

Repealing Ordinance No 8 of 14 December 2006 on the Capital Adequacy of Credit Institutions

(Darjaven Vestnik, issue 106 of 2006)

(Published in the Darjaven Vestnik, issue 40 of 13 May 2014)

§ 1. Ordinance No 8 of 2006 on the Capital Adequacy of Credit Institutions (Darjaven vestnik, issue 106 of 2006) is hereby repealed.

§ 2. This Ordinance is adopted by Resolution No 41 of the Governing Council of the Bulgarian National Bank of 24 April 2014.

Ordinance

on Amendment of Ordinance No. 8 of 2014 on Banks' Capital Buffers

(Published in the Darjaven Vestnik, issue 63 of 4 August 2017)

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Final Provision

§ 2. This Ordinance is issued on the grounds of Article 39, paragraph 2 in connection with § 13 of the Transitional and Final Provisions of the Law on Credit Institutions and is adopted by Resolution No 105 of the Governing Council of the Bulgarian National Bank of 20 July 2017.