

Ordinance No 8*
of the BNB
of 27 April 2021
on Capital Buffers, the Combined Buffer Requirement,
Restrictions on Distributions and the Guidance on
Additional Own Funds

(Published in the Darjaven Vestnik, issue 40 of 14 May 2021)

Chapter One

GENERAL PROVISIONS

Subject

Article 1. (1) This Ordinance shall lay down the types of capital buffers and the terms and procedure for their formation and updating, as well as the combined buffer requirement.

(2) This Ordinance shall also determine:

1. restrictions on dividend or interest payments with regard to own funds;
2. conditions for compulsory coverage of losses by shareholders and holders of bank own funds instruments prior to covering losses by using other sources;
3. other restrictions to be respected by banks in case of established failure or to prevent the failure to meet the capital buffers requirements;
4. restrictions applicable in case of established failure or to prevent the failure to meet the leverage ratio buffer requirement;
5. the terms and procedure for applying the guidance on additional own funds.

Types of Capital Buffers and the Combined Buffer Requirement

Article 2. (1) Capital buffers shall be:

1. a capital conservation buffer;
2. a bank-specific countercyclical capital buffer;
3. a global systemically important institution (G-SII) buffer;
4. an other systemically important institutions (O-SII) buffer;
5. a systemic risk buffer.

(2) Buffers under paragraph 1, items 1, 2, 4 and 5 shall apply on an individual and consolidated basis in compliance with Part One, Title II of Regulation (EU)

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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, L 176/1 of 27 June 2013), hereinafter referred to as 'Regulation (EU) No 575/2013', and the buffer under paragraph 1, item 3 shall apply only on a consolidated basis.

(3) The combined buffer requirement shall be the total Common Equity Tier 1 capital necessary to meet the requirement for the capital conservation buffer extended by the relevant applicable buffers under paragraph 1, items 2–5.

(4) Where a bank does not meet the requirements for maintaining a combined buffer requirement, the restrictions under Article 17 shall apply to it.

Chapter Two

CONSERVATION CAPITAL BUFFER

Article 3. In addition to Common Equity Tier 1 capital maintained to meet the capital requirements set out in Article 92(1)(a) to (c) of Regulation (EU) No 575/2013, banks shall maintain a capital conservation buffer of Common Equity Tier 1 capital equal to 2.5 per cent of their total risk exposure amount.

Chapter Three

INSTITUTION-SPECIFIC COUNTERCYCLICAL CAPITAL BUFFER

General Requirement

Article 4. Each bank shall maintain a specific countercyclical capital buffer of Common Equity Tier 1 capital equal to its total risk exposure amount multiplied by the weighted average of the rates of the countercyclical capital buffer calculated in the manner provided for in Article 6, paragraph 3.

Setting Countercyclical Buffer Rates

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

(2) The reference indicator shall reflect the credit cycle and the risks due to 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 ratio of credit to Gross Domestic Product (GDP) from its long-term trend, taking into account:

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

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

(3) The Bulgarian National Bank shall assess and change, where necessary, on a quarterly basis the rate of the countercyclical buffer for banks in Bulgaria, taking into account:

1. the reference indicator calculated in accordance with paragraph 2;
2. ESRB principles on the assessment of the appropriate countercyclical buffer rate, guidelines on variables that indicate the build-up of systemic risks, including quantitative criteria showing that the buffer should be maintained, changed or fully released, as well as other recommendations of the ESRB for setting the rate of the buffer;
3. other variables that the BNB considers relevant for addressing the cyclical systemic risk.

(4) The Bulgarian National Bank shall set the rate of the countercyclical buffer applicable to credit risk exposures in the Republic of Bulgaria as a per cent between 0 per cent and 2.5 per cent of the total amount of these exposures, calibrated in steps 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 the BNB increases it, the BNB shall also decide 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 expiry of the 12-month period, the BNB shall justify this on the basis of exceptional circumstances.

(6) If the BNB reduces the existing countercyclical buffer rate, it shall also decide an indicative period during which no increase in the buffer is expected. However, this indicative period shall not bind the BNB.

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

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 that buffer rate;
5. where the buffer rate is increased, the date from which banks shall apply that increased buffer rate for the purposes of calculating their bank-specific countercyclical capital buffer;
6. where the date 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 that shorter deadline for application;

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

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

(9) The Bulgarian National Bank shall notify the ESRB in case of a change in the rate of the countercyclical buffer, as well as about the data under paragraph 7.

Calculation of Bank-specific Countercyclical Capital Buffer Rates

Article 6. (1) The bank-specific countercyclical capital buffer rate shall apply to exposure classes under Article 112(g) to (q) of Regulation (EU) No 575/2013, which are subject to:

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

2. own funds 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 where the exposure is part of the trading book; or

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

(2) The bank-specific countercyclical capital buffer rate shall consist of the weighted average of the countercyclical buffer rates that apply in the jurisdictions where the exposures under paragraph 1 are located or are applied in compliance with Article 8, paragraphs 1 and 2.

(3) The weighted average under paragraph 2 shall be calculated by multiplying capital requirements for credit risk, calculated for the exposures under paragraph 1 in relevant jurisdictions, by the applicable countercyclical buffer rates for these jurisdictions, and the resulting products are added. The amount received is divided by total capital requirements for the exposures under paragraph 1.

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

(5) Paragraph 4 shall also apply in calculation of the capital requirements on a consolidated basis.

(6) For the purposes of the calculation under paragraph 2, where the buffer rate is increased:

1. the countercyclical buffer rate for the Republic of Bulgaria shall apply from the date specified in the information, as published in compliance 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, as disclosed by the BNB in compliance with Article 7, paragraph 2, item 3;

3. the countercyclical buffer rate up to 2.5 per cent for another Member State shall apply from the date specified in the information, as published by an authority responsible for setting the countercyclical buffer rate in this Member State;

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

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

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

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

Recognition of Countercyclical Buffer Rates in Excess of 2.5 Per Cent

Article 7. (1) Where a designated authority responsible for setting a countercyclical buffer rate of a Member State or a 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 that buffer rate in respect of the exposures of banks in this country.

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

1. the applicable countercyclical buffer rate;
2. the Member State or third countries to which it applies;
3. where the buffer rate is increased, the date from which the banks must apply that increased buffer rate;
4. where the period under item 3 is less than 12 months after the date of the announcement, a reference to the exceptional circumstances that justify that shorter deadline for application.

BNB Decisions 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 this country in which banks licensed in the Republic of Bulgaria have exposures, the BNB may set a buffer rate to be applied by banks in calculating the bank-specific countercyclical buffer rate.

(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 to be applied by banks if the BNB reasonably considers that the buffer rate set by the relevant third-country authority is not sufficient to protect the banks licensed in the Republic of Bulgaria appropriately from the risks of excessive credit growth in this country.

(3) When exercising the power under paragraph 2, the BNB shall not set a countercyclical buffer rate below the level set by the relevant third-country authority unless that buffer rate exceeds 2.5 per cent of the total risk exposure amount in this 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 that buffer rate in calculating their bank-specific countercyclical capital buffer. This date shall be no later than 12 months from the date when the increased buffer rate is announced in accordance with paragraph 5. If this date is before the expiry of the 12-month period, the BNB shall justify this on the basis of exceptional circumstances.

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

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

*Chapter Four***BUFFERS FOR GLOBAL AND OTHER SYSTEMICALLY IMPORTANT INSTITUTIONS***General Provisions*

Article 9. (1) The Bulgarian National Bank may identify, on a consolidated basis, global systemically important institutions (G-SIIs), and, on an individual or consolidated basis, other systemically important institutions (O-SIIs) in accordance with the methodologies under this Article.

(2) A global systemically important institution may be:

1. a group headed by an EU parent credit institution, an EU parent financial holding company, or an EU parent mixed financial holding company; or

2. a bank that is not a subsidiary of an EU parent credit institution, of an EU parent financial holding company or of an EU parent mixed financial holding company.

(3) Other systemically important institutions may either be a credit institution or a group headed by an EU parent credit institution, an EU parent financial holding company, an EU parent mixed financial holding company, a parent institution in a Member State, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State.

(4) The identification methodology for G-SIIs shall be based on the following categories:

1. the size of the group;

2. interconnectedness of the group with the financial system;

3. substitutability of the services or of the financial infrastructure provided by the group;

4. complexity of the group;

5. cross-border activity of the group, including cross-border activity between Member States and between a Member State and a third country.

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

(6) The methodology shall produce an overall score for each assessed entity and allow G-SIIs to be identified and allocated into a sub-category as described in Article 10, paragraphs 2–6.

(7) The Bulgarian National Bank shall assess the systemic importance of the O-SIIs on the basis of at least any of the following criteria:

1. the size;

2. the importance for the economy of the Republic of Bulgaria or the EU;

3. the significance of cross-border activities;

4. the interconnectedness of the institution or group with the financial system.

(8) The additional identification methodology for G-SIIs shall be based on the following criteria:

1. the categories under paragraph 4, items 1–4;
2. the cross-border activity of the group, except for the group activity in participating Member States under Article 4 of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010.

(9) Each criterion under paragraph 8 shall receive an equal weighting and shall consist of quantifiable indicators which for the criteria under paragraph 8, item 1 shall be the same as those under paragraph 5.

(10) The additional identification methodology under paragraph 8 shall produce an additional overall score for each assessed G-SII, on the basis of which the measures referred to in Article 10, paragraph 6, item 3 may be taken.

(11) The Bulgarian National Bank shall review annually the identification of G-SIIs and O-SIIs and the G-SII allocation into the respective sub-categories, report the result to the systemically important institution concerned and to the ESRB and disclose on its website the updated list of identified systemically important institutions and the sub-category into which each identified G-SII is allocated. The notification to the ESRB shall contain full reasons why the supervisory judgment has been exercised or not in accordance with Article 10, paragraph 6.

(12) Where a group, on a consolidated basis, is subject to a G-SII buffer and to an O-SII buffer, the higher buffer shall apply.

G-SII Buffer

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

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

(3) The lowest boundary and the boundaries between each sub-category shall be determined by the scores in accordance with the identification methodology referred to in Article 9, paragraph 4.

(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 requirement of additional Common Equity Tier 1 capital, with the exception of the sub-category five and any added higher sub-category. Systemic significance is the expected impact exerted by the G-SII's distress on the global financial market.

(5) The lowest sub-category shall be assigned a G-SII buffer of 1 per cent of the total risk exposure amount, and the buffer assigned to each sub-category shall

increase in gradients of at least 0.5 per cent of the total risk exposure amount up to the sub-category four inclusive.

(6) Based on a 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 that sub-category or to a higher sub-category, thereby designating it as a G-SII;
3. on the basis of the additional overall score referred to in Article 9, paragraph 10 re-allocate a G-SII from a higher sub-category to a lower sub-category.

(7) The Bulgarian National Bank shall notify to the ESRB and disclose the names of the G-SIIs identified by it and the respective sub-category to which each G-SII is allocated.

O-SII Buffer

Article 11. (1) The Bulgarian National Bank may require each O-SII, on a consolidated or an individual basis, as applicable, to maintain an O-SII buffer of up to 3 per cent of the total risk exposure amount. This buffer shall consist of Common Equity Tier 1 capital.

(2) Subject to the European Commission (EC) authorisation, the BNB may require an O-SII buffer higher than 3 per cent of the total risk exposure amount, which shall also consist of Common Equity Tier 1 capital.

(3) The O-SII buffer determination shall not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the European Union as a whole forming or creating an obstacle to the proper functioning of the internal market. The set buffer shall be reviewed by the BNB at least once annually.

(4) The BNB shall notify the ESRB one month before the publication of the decision under paragraph 5 on setting or changing a buffer. The notification shall set out 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 available information;
3. the O-SII buffer rate that the BNB intends to set.

(5) In the cases under paragraph 2, the notification under paragraph 4 shall be made three months before the publication.

(6) Where an O-SII is a subsidiary of either a G-SII or an O-SII which is either an institution or a group headed by an EU parent institution, and subject to an O-SII buffer on a consolidated basis, the buffer that applies on an individual basis for the subsidiary shall not exceed the lower of:

1. the sum of 1 per cent of the total risk exposure amount and the higher of the G-SII or the O-SII buffer rate applicable to the group on a consolidated basis; and

2. 3 per cent of the total risk exposure amount or the rate the European Commission has authorised to be applied to the group on a consolidated basis.

(7) The Bulgarian National Bank shall notify to the ESRB and disclose on the BNB website the names of the O-SIIs identified by it.

Chapter Five

SYSTEMIC RISK BUFFER

General Requirements

Article 12. (1) The Bulgarian National Bank may introduce a systemic risk buffer of Common Equity Tier 1 capital for the banking sector or a subset of that sector, on all or a subset of exposures as referred to in paragraph 3 in order to prevent and mitigate macroprudential or systemic risks, which:

1. are not covered by Regulation (EU) No 575/2013, countercyclical capital buffer or G-SII and O-SII buffers; and

2. are likely to cause disruption in the financial system and have serious negative consequences to the financial system and the real economy in the Republic of Bulgaria.

(2) Each bank shall calculate the systemic risk buffer applicable to it in accordance with Annex 1.

(3) The systemic risk buffer may apply to one or more of:

1. all exposures located in the Republic of Bulgaria;

2. sectoral exposures located in the Republic of Bulgaria as follows:

a) all retail exposures to natural persons which are secured by residential property;

b) all exposures to legal persons which are secured by mortgages on commercial immovable property;

c) all exposures to legal persons, excluding those referred to in (b);

d) all exposures to natural persons, excluding those referred to in (a);

3. all exposures located in other Member States subject to paragraph 9 and Article 13, paragraph 3;

4. sectoral exposures referred to in item 2 located in other Member States only where this is required for the recognition of a buffer rate set by another Member State;

5. exposures located in third countries;

6. subsets of any of the exposure categories identified in item 2.

(4) The systemic risk buffer shall apply to all exposures or to certain subsets of exposures under paragraph 3, to all banks or to one or more subsets of them and shall be set in steps of adjustment of 0.5 percentage points or multiple thereof. Different requirements may be introduced for different subsets of banks or exposures.

(5) When requiring a systemic risk buffer to be maintained 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 forming or creating an obstacle to the proper functioning of the internal market and overlap of the scope of the countercyclical capital buffer and of G-SII and O-SII buffers. The set buffer shall be reviewed by the BNB at least every second year.

(6) Before making the publication under paragraph 10, the BNB shall notify the ESRB of the systemic risk buffer rate set by it, including where the buffer applies to exposures located in third countries. Where a bank to which one or more systemic risk buffer rates apply, is a subsidiary the parent of which is established in another Member State, the BNB shall notify the authorities of that Member State. The notification shall set out in detail:

1. the systemic or macroprudential risks in the Republic of Bulgaria;
2. the reasons why the dimension of the systemic or macroprudential risks threatens the stability of the financial system of the Republic of Bulgaria justifying the systemic risk buffer rate;
3. the justification for why the systemic risk buffer is considered likely to be effective and proportionate to mitigate the risk;
4. an assessment of the likely positive or negative impact of the systemic risk buffer on the internal market, based on available information;
5. the systemic risk buffer rate or rates that the BNB intends to set and the exposures, and banks which shall be subject to such rates;
6. where the systemic risk buffer rate applies to all exposures, a justification of why the BNB considers that the systemic risk buffer is not duplicating the functioning of the O-SII buffer.

(7) Where the decision to set the systemic risk buffer rate results in a decrease or no change from the previously set buffer rate, paragraph 8 and Article 13 shall not apply.

(8) Where the setting or resetting of a systemic risk buffer rate or rates on any set or subset of exposures referred to in paragraph 3 subject to one or more systemic risk buffers does not result in a combined systemic risk buffer rate higher than 3 per cent for any of those exposures, the BNB shall notify the ESRB in accordance with paragraph 6 one month before the publication referred to in paragraph 10. The recognition of a systemic risk buffer rate set by another Member State in accordance with Article 14 shall not count towards the 3 per cent threshold.

(9) The Bulgarian National Bank may provide that the systemic risk buffer applies to all exposures located within the EU subject to paragraph 6. In that case the BNB shall apply uniform criteria and methodology to set the buffer for all exposures located within the EU, unless the buffer is set to recognise the systemic risk buffer rate set by another Member State.

(10) The Bulgarian National Bank shall announce the systemic risk buffer rate by publication on its official website. The publication shall include at least the following information:

1. the systemic risk buffer rate or rates;

2. the banks to which the systemic risk buffer applies;
3. the exposures to which the systemic risk buffer rate or rates apply;
4. a justification for setting or resetting the systemic risk buffer rate or rates, unless the publication of this information could jeopardise the stability of the financial system;
5. the date from which banks shall apply the setting or resetting of the systemic risk buffer; and
6. the names of the countries where exposures located in those countries are included in the systemic risk buffer scope.

Setting a Systemic Risk Buffer of above 3 Per Cent

Article 13. (1) Where the setting of a systemic risk buffer rate or rates on any set or subset of exposures referred to in Article 12, paragraph 3 subject to one or more systemic risk buffers results in a combined systemic risk buffer rate at a level higher than 3 per cent and up to 5 per cent for any of those exposures, the BNB shall, along with the notification under Article 12, paragraph 6, request the EC's opinion.

(2) When setting the buffer rate under paragraph 1 the BNB shall await the EC's opinion before implementing the final decision. Where the opinion of the EC is negative, the BNB shall decide to comply with that opinion or give reasons for not doing so.

(3) Where a bank to which one or more systemic risk buffer rates under paragraph 1 apply, is a subsidiary the parent of which is established in another Member State, the BNB shall, along with the notification under Article 12, paragraph 6, request a recommendation by the EC and the ESRB. Where the authorities of the other Member State disagree on the recommended systemic risk buffer rate and in the case of a negative recommendation of both the EC and the ESRB, the BNB may refer the matter to EBA and request its consideration in accordance with Article 19 of Regulation (EU) No 1093/2010. The BNB shall postpone the decision to set the systemic risk buffer rate or rates for those exposures pending a decision by EBA.

(4) In the cases under paragraph 1, where the combined systemic risk buffer rate is higher than 5 per cent for any of those exposures, the BNB shall seek the authorisation of the EC before implementing a systemic risk buffer. In that case the BNB shall apply the set buffer rate after the adoption by the EC of a relevant implementing act.

(5) The Bulgarian National Bank may give a negative opinion where it is notified by a competent authority of another Member State of the setting of one or more systemic risk buffers under paragraph 1 which shall apply to a subsidiary the parent of which is established in the Republic of Bulgaria.

Recognition of a Systemic Risk Buffer Rate

Article 14. (1) The Bulgarian National Bank may recognise a systemic risk buffer rate set in another Member State and require its application by banks licensed in the Republic of Bulgaria for their exposures located in that Member State. In exercising

its judgement, the BNB shall take into consideration the information presented by the relevant competent authority or by the designated authority related to the buffer setting.

(2) The Bulgarian National Bank shall notify the ESRB of its decision referred to in paragraph 1.

(3) In the cases under paragraph 1 the systemic risk buffer set in the other Member State may be cumulative with the systemic risk buffer under Article 12 or Article 13 provided that the buffers address different risks. Where the buffers address the same risks, only the higher buffer shall apply.

(4) 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 G-SII and O-SII Buffers, and the Systemic Risk Buffer

Article 15. (1) Where a bank is subject to a systemic risk buffer, that buffer shall be cumulative with the O-SII buffer or the G-SII buffer.

(2) Where the sum of the systemic risk buffer rate and the O-SII buffer rate or the G-SII buffer rate is higher than 5 per cent, the procedure set out in Article 11, paragraph 2 shall apply.

Chapter Six

APPLICATION OF THE COMBINED BUFFER REQUIREMENT

Article 16. (1) A bank shall not use Common Equity Tier 1 capital that is maintained to meet the combined buffer requirement to meet:

1. own funds requirements set out in Article 92 (1), (a) to (c) of Regulation (EU) No 575/2013;

2. the additional own funds requirement under Article 103, paragraph 2, item 5 of the Law on Credit Institutions (LCI) imposed to address risks other than the risk of excessive leverage;

3. the guidance on additional own funds referred to in Article 79d, paragraph 3 to address risks other than the risk of excessive leverage;

4. the risk-based components of the requirements set out in Articles 92a and 92b of Regulation (EU) No 575/2013 and Articles 69b to 69f of the Law on Recovery and Resolution of Credit Institutions and Investment Firms.

(2) A bank shall not use Common Equity Tier 1 capital that is maintained to meet one of the components of the combined buffer requirement to meet the other components of the combined buffer requirement.

*Chapter Seven***RESTRICTIONS ON DISTRIBUTIONS*****Restrictions in Case of Failure to Meet
the Combined Buffer Requirement***

Article 17. 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 Annex 2 to this Ordinance and shall notify the BNB thereof. 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 2010 on the Requirements for Remunerations in Banks (Darjaven Vestnik, issue 102 of 2010), or pay 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) Where the bank fails to meet or exceed the combined buffer requirement, it shall not make a distribution through the actions under paragraph 2, in an amount more than the MDA.

(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, where 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 under 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 or year-end profit;
3. the MDA calculated in accordance with Annex 2;
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 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 adopt arrangements to ensure that the amount of distributable profits and the MDA are calculated accurately, and shall be able to provide them to the BNB upon request.

(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 capital instruments, including those referred to in Article 26(1)(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(1)(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(1)(a) of Regulation (EU) No 575/2013;
5. a distribution of items referred to in Article 26(1)(b) to (e) of Regulation (EU) No 575/2013.

(8) A bank shall be considered as failing to meet the combined buffer requirement under paragraph 2, where it does not have own funds in an amount and of the quality needed to meet at the same time the combined buffer requirement and each of the following pairs of requirements:

1. Article 92(1)(a) of Regulation (EU) No 575/2013 and the additional own funds requirement under Article 103, paragraph 2, item 5 of the Law on Credit Institutions imposed for risks other than the risk of excessive leverage;
2. Article 92(1)(b) of Regulation (EU) No 575/2013 and the additional own funds requirement under Article 103, paragraph 2, item 5 of the Law on Credit Institutions imposed for risks other than the risk of excessive leverage; and
3. Article 92(1)(c) of Regulation (EU) No 575/2013 and the additional own funds requirement under Article 103, paragraph 2, item 5 of the Law on Credit Institutions imposed for risks other than the risk of excessive leverage.

Restrictions in Case of Failure to Meet the Leverage Ratio Buffer Requirement

Article 18. (1) A bank that meets the leverage ratio 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 leverage ratio buffer requirement is no longer met.

(2) A bank that fails to meet the leverage ratio buffer requirement shall calculate the Leverage ratio related Maximum Distributable Amount ('L-MDA') in accordance with Annex 3 to this Ordinance and shall notify the BNB thereof. Before calculating the L-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 pension benefits within the meaning of Ordinance No 4 of 2010 on the Requirements for Remunerations in

Banks, or pay variable remuneration if the obligation to pay was created at a time when the bank failed to meet the leverage ratio buffer requirement;

3. make payments on Additional Tier 1 instruments.

(3) Where a bank fails to meet or exceed the leverage ratio buffer requirement, it shall not make a distribution through the actions under paragraph 2, in an amount more than the L-MDA.

(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 a bank fails to meet the leverage ratio buffer requirement and intends to distribute any of its distributable profits or undertake any of the actions under paragraph 2, it shall notify the BNB and shall submit the information under Article 17, paragraph 5, as well as the L-MDA calculated in accordance with Annex 3.

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

(7) For the purposes of paragraphs 1 and 2, a distribution in connection with Common Equity Tier 1 capital shall include actions under Article 17, paragraph 7.

(8) A bank shall be considered as failing to meet the leverage ratio buffer requirement under paragraph 2, where it does not have own funds in an amount and of the quality required to meet at the same time the leverage ratio buffer requirement, the requirement under Article 92(1)(d) of Regulation (EU) No 575/2013 and additional own funds requirement under Article 103, paragraph 2, item 5 of the Law on Credit Institutions imposed for the risk of excessive leverage.

Chapter Eight

CAPITAL CONSERVATION PLAN

Article 19. (1) Where a bank fails to meet the combined buffer requirement or the leverage ratio 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 any of the requirements.

(2) The Bulgarian National Bank may authorise a longer delay under paragraph 1 up to 10 working days, taking into account the bank performance and considering the complexity of its activities.

(3) 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, the leverage ratio buffer requirement respectively;

3. any other information that the BNB considers to be necessary to carry out the assessment required by paragraph 4.

(4) The Bulgarian National Bank shall approve the capital conservation plan only if it considers that its implementation would ensure conservation or raising of sufficient capital to enable the bank to meet the combined buffer requirement, the leverage ratio buffer requirement respectively, within a an appropriate period.

Chapter Nine

LOSS ABSORPTION BY HOLDERS OF OWN FUNDS INSTRUMENTS

Article 20. 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.

Chapter Ten

APPLICATION OF THE GUIDANCE ON ADDITIONAL OWN FUNDS

Article 21. (1) The guidance on additional own funds shall be bank's own funds required by the BNB to reach the overall level of own funds under Article 79d, paragraph 2 of the Law on Credit Institutions exceeding the amount of:

1. the own funds requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ, L 347/35 of 28 December 2017);

2. the additional own funds requirement under Article 103, paragraph 2, item 5 of the Law on Credit Institutions;

3. the combined buffer requirement or the leverage ratio buffer requirement, as applicable.

(2) The guidance on additional own funds shall be bank-specific. The guidance may cover risks for which an additional own funds requirement under Article 103a, paragraph 2, item 1 of the Law on Credit Institutions has been imposed only if it covers risk aspects not covered by this requirement.

(3) Own funds that are used to meet the guidance on additional own funds to address risks other than the risk of excessive leverage shall not be used to meet any of the following:

1. own funds requirements set out in Article 92 (1)(a) to (c) of Regulation (EU) No 575/2013;

2. the requirement referred to in Article 103a, paragraph 2 of the Law on Credit Institutions imposed by the BNB to address risks other than the risk of excessive leverage;

3. the combined buffer requirement.

(4) Own funds that are used to meet the guidance on additional own funds to address the risk of excessive leverage shall not be used to meet any of the following:

1. the own funds requirement under Article 92(1)(d) of Regulation (EU) No 575/2013;

2. the requirement under Article 103a, paragraph 2 imposed by the BNB to address the risk of excessive leverage;

3. the leverage ratio buffer requirement.

(5) Failure to apply the guidance on additional own funds, where the bank meets own funds requirements set out in Parts Three, Four and Seven of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402, the additional own funds requirement under Article 103, paragraph 2, item 5 of the Law on Credit Institutions and the combined buffer requirement or the leverage ratio buffer requirement, as applicable, shall not be a ground for applying the restrictions under Article 17 or 18.

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(1)(3) of Regulation (EU) No 575/2013.

3. ‘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.

4. ‘Total risk exposure amount’ shall be the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

5. ‘Designated authority’ shall be a public authority or body of a Member State as defined in Article 136(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.

6. ‘Reference indicator’ shall be a benchmark buffer calculated in accordance with the ESRB guidance on setting the countercyclical buffer rate.

7. ‘The leverage ratio buffer’ shall be the buffer as defined in Article 92(1a) of Regulation (EU) No 575/2013.

§ 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 and of Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures.

TRANSITIONAL AND FINAL PROVISIONS

§ 3. This Ordinance is issued on the grounds of Article 39, paragraphs 2 and 3 and Article 79d, paragraph 3 in connection with § 13 of the Transitional and Final Provisions of the Law on Credit Institutions, and is adopted by Resolution No 125 of 27 April 2021 of the Governing Council of the Bulgarian National Bank.

§ 4. This Ordinance shall enter into force on the day of its publication in the *Darjaven Vestnik*, except for Article 18 which shall enter into force on 1 January 2022.

§ 5. Until 31 December 2021 including Article 19 shall only apply to the combined buffer requirement.

§ 6. With effect from 26 June 2021 the words ‘and investment firms’ in Article 2, paragraph 2, § 1, item 5 and § 2 of the Additional Provisions shall be deleted.

§ 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.

§ 9. This Ordinance shall repeal Ordinance No 8 of 2014 on Banks’ Capital Buffers (published in the *Darjaven Vestnik*, issue 40 of 2014; amended, issue 63 of 2017).

Annex 1
to Article 12, paragraph 2

Computation Procedure for Setting the Systemic Risk Buffer

The systemic risk buffer shall be calculated as follows:

$B_{SR} = r_T * E_T + \sum_i r_i * E_i$, where

B_{SR} shall be the systemic risk buffer;

r_T shall be the buffer rate applicable to the total risk exposure amount of a bank;

E_T shall be the total risk exposure amount of a bank;

i shall be the index denoting the subset of exposures under Article 12, paragraph 3;

r_i shall be the buffer rate applicable to the risk exposure amount of the subset of exposures i ;

E_i shall be the risk exposure amount of a bank for the subset of exposures i .

Annex 2
to Article 17, paragraph 2

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 MDA shall be reduced by any of the actions referred to in Article 17, 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) any interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 after taking into account the results of the actions referred to in Article 17, paragraph 2;

b) any year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 after taking into account the results of the actions referred to in Article 17, 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(1)(a) to (c) of Regulation (EU) No 575/2013 and additional own funds requirement under Article 103, paragraph 2, item 5 of the Law on Credit Institutions imposed for risks other than the risk of excessive leverage 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.

Annex 3
to Article 18, paragraph 2

Computation Procedure for Determining the L-MDA

1. Each bank shall calculate the L-MDA by multiplying the sum under item 2 by the factor determined in accordance with item 3. The L-MDA shall be reduced by any of the actions referred to in Article 18, 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) any interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 after taking into account results of the actions referred to in Article 18, paragraph 2;

b) any year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 after taking into account results of the actions referred to in Article 18, 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(1)(d) of Regulation (EU) No 575/2013 and additional own funds requirement under Article 103, paragraph 2, item 5 of the Law on Credit Institutions imposed for the risk of excessive leverage covers:

a) up to 25 per cent of the leverage ratio 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 leverage ratio buffer requirement, the factor under item 1 shall be 0.2;

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

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