Regulation of the National Bank of Belgium of 4 March 2014 on the implementation of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013

(Unofficial consolidated text – 1 January 2018)

DEFINITION

Article 1. For the purposes of this Regulation, Regulation No 575/2013 shall be understood to mean 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.

SCOPE

Article 2. This Regulation shall apply to credit institutions governed by Belgian law as referred to in Book II of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms, and to investment firms governed by Belgian law as referred to in Article 4(1)(2) of Regulation No 575/2013, hereinafter referred to as "the institution" or "the institutions".

By way of derogation from the previous paragraph, Articles 3, 4, 5, 9, 10, first paragraph, 11, 12, 13, 14, 15, 16bis, 35, 36 and 37, and the Annex to the present Regulation shall only apply to credit institutions governed by Belgian law that are not under the direct supervision of the European Central Bank pursuant to Article 6(4) of the SSM Regulation, and to investment firms governed by Belgian law as referred to in Article 4(1)(2) of Regulation No 575/2013.

LEVEL OF APPLICATION OF REQUIREMENTS

Application of requirements on a consolidated basis

Article 3. For the purposes of Article 18 of Regulation No 575/2013, the NBB shall, when assessing the risks arising for the consolidating company from its relationship with the company concerned and, in particular, from the liability incurred by the consolidating company as a result of its participation, take into account its capital ties or the considerable influence exercised by it.

OWN-FUND ITEMS

Common Equity Tier 1 items and instruments

Requirements for deduction where consolidation is applied

Article 4. For the purposes of Article 49(2) of Regulation No 575/2013, the NBB shall require the deduction of holdings of own funds instruments issued by financial sector entities, for the supervision of the institution, on an individual and a sub-consolidated basis, in the following cases:

a) the holdings of these instruments are not covered by the supervision of the institution on a consolidated basis;

b) the institution does not have the right to appoint or remove a majority of the members of the board of directors and holds less than 50 % of the voting rights at the general meeting;

c) there are current or foreseen practical or legal impediments to the prompt transfer of own funds or repayment of liabilities when due by the subsidiary to its parent company.
Risk weighting and prohibition of qualifying holdings outside the financial sector
Article 5. Without prejudice to Article 90 of Regulation (EU) No 575/2013, institutions shall, in order to calculate capital requirements in accordance with Part Three of Regulation (EU) No 575/2013, apply a risk weight of 1250 % to the greater of the following amounts:
a) the amount of the qualifying holdings in companies as referred to in Article 89(1) of Regulation (EU) No 575/2013 in excess of 15 % of the eligible capital of the institution, and
b) the total amount of the qualifying holdings in companies as referred to in Article 89(2) of Regulation (EU) No 575/2013 that exceeds 60 % of the eligible capital of the institution.
OWN FUNDS REQUIREMENTS FOR CREDIT RISK
Standardised Approach - Risk weighting
Article 6. For the purposes of Article 115(2) of Regulation No 575/2013, exposures to the Communities and Regions in Belgium shall be treated as exposures to the Belgian central government.
Article 7. […]
Repealed.
Article 8. […]
Repealed.
Article 9. For the purposes of Article 129 of Regulation No 575/2013, the application of point (c) of paragraph 1 of the aforementioned Article shall not be waived.
Permission to use the Internal Ratings Based Approach provided by the competent authorities
Article 10. For the purposes of the provisions of Article 150 of Regulation No 575/2013, institutions should submit a reasoned request to the NBB. The NBB shall assess this request on the basis of the following criteria:
a) the risks associated with the exposures that are concerned are adequately covered by the Standardised Approach;
b) the volume of exposures remains immaterial in terms of the number of counterparties, the amount or the risk profile of those exposures.

During the period from 1 January 2014 to 31 December 2017, institutions that were permitted to use the Standardised Approach for exposures meeting the conditions of Article(150)(1)(d) until 31 December 2013, shall apply the following percentages to the amount of the own funds requirements calculated using the Internal Ratings Based Approach:
a) 20 % for the period from 1 January 2014 to 31 December 2014;
b) 40 % for the period from 1 January 2015 to 31 December 2015;
c) 60 % for the period from 1 January 2016 to 31 December 2016;
d) 80 % for the period from 1 January 2017 to 31 December 2017.
Probability of default, Loss Given Default and maturity
Article 11. For the purposes of Article 162(1), second subparagraph of Regulation No 575/2013, institutions that have not received permission to use own LGDs shall apply the provisions of the second paragraph of the aforementioned Article to calculate the maturities.
Conditions for using the IRB Approach - Default of an obligator
Article 12. Institutions shall apply the “more than 90 days past due” rule for the exposure classes referred to in Article 178(1)(b) of Regulation No 575/2013.
Securitisation – Recognition of significant risk transfer
Article 13. For the purposes of the provisions of Articles 243 and 244 of Regulation No 575/2013, institutions should, prior to any securitisation transaction, submit to the NBB an information file based on which the NBB can verify whether the conditions for a significant risk transfer have been met. This file should also describe the policy to be adopted by the institution in terms of securitisation (objective of the transactions, policy for the retention of credit risk, distribution of responsibilities within the institution, possible delegation of power). If the institution cannot demonstrate to the NBB that it has effectively transferred a significant part of the credit risks of the securitised portfolio to a third party, no reduction of own funds requirements for the securitised exposures can be allowed with regard to this securitisation transaction. The exposures shall then be treated as if they had not been securitised.
Counterparty credit risk
Article 14. For the transactions referred to in Article 282(6) of Regulation (EU) No 575/2013, institutions shall use the Mark-to-market method laid down in Article 274 of Regulation (EU) No 575/2013.

OWN FUNDS REQUIREMENTS FOR MARKET RISK
Own funds requirements for position risk – Netting calculation
Article 15. For the purposes of Article 327(2) of Regulation No 575/2013:
a) securities that can be converted into equities or into other securities that are equivalent to equities may be treated as positions in equities or in other securities that are equivalent to equities, which are equal in value to the amount of the instrument into which these securities can be converted, multiplied by the delta.
b) the resulting positions may be netted against opposite positions in equities or in derivative instruments with the same underlying value.
c) in order to cover the risks associated with taking into account the probability that a convertible security is converted, 10 % of the positions netted against positions in convertible securities shall, however, remain subject to the requirements of Title IV, Section 3 of the EU Regulation.
LARGE EXPOSURES
Article 16. § 1. Pursuant to Article 493(3)(c) of Regulation no 575/2013, the following shall apply during the transitional period referred to in that paragraph:
1° Exposures, including participations or other kinds of holdings, incurred by an institution to its parent company or to other subsidiaries of that parent company, where those companies are covered by the supervision on a consolidated basis as referred to in Article 493(3)(c) of the aforementioned Regulation, shall be subject for 25% to the application of Article 395(1) of the same Regulation, without prejudice to the provisions of 2° and the third paragraph of this Article.
2° Without applying the weighting referred to in 1°, the exposure value referred to in Article 395(1), second subparagraph of Regulation No 575/2013 should in no case exceed 100 % of the eligible capital of the credit institution.
3° For the purposes of the provisions of 1° and 2°, only the effect of the credit risk mitigation shall be taken into account, in accordance with Articles 399, 400(1) and (2)(a) and (i), 401, 402 and 403 of Regulation No 575/2013, for the exposures referred to in 1°.
§ 2. For the purposes of Article 493(3)(c) of Regulation No 575/2013, during the transitional period referred to in that paragraph, exposures, including participations or other kinds of holdings, incurred by an institution to its own subsidiaries that are covered by the supervision on a consolidated basis as referred to in Article 493(3)(c) of the aforementioned Regulation, shall be exempted from the application of Article 395(1) of that Regulation.
§ 3. Pursuant to Article 493(3)(c) of Regulation No 575/2013, if the competent authority grants prior permission, the exposures referred to in the first paragraph shall be exempted from the application of Article 395(1) of Regulation No 575/2013, insofar as at least each of the following conditions have been met:
- the institution is financed almost exclusively by professional counterparties;
- the deposits received from non-professional counterparties are limited in size within the entire Belgian banking system.

§ 4. Pursuant to Article 400(2)(c) of Regulation No 575/2013, the first three paragraphs of this Article shall, after the transitional period referred to in Article 493(3) of the same Regulation, only apply to credit institutions governed by Belgian law that are not under the direct supervision of the European Central Bank pursuant to Article 6(4) of the SSM Regulation, as well as to investment firms governed by Belgian law as referred to in Article 4(1)(2) of Regulation No 575/2013.
Article 16bis. In accordance with Article 400(2) of Regulation (EU) No 575/2013, the following exemptions shall apply:
a) The exposures referred to in Article 400(2)(a) of Regulation (EU) No 575/2013 shall be exempted for 80 % of the nominal value of the covered bonds from the application of Article 395(1) of the aforementioned Regulation, provided that the conditions referred to in Article 400(3) of that Regulation have been met;
b) The exposures referred to in Article 400(2)(b) of Regulation (EU) No 575/2013 shall be exempted for 80% of their value from the application of Article 395(1) of the aforementioned Regulation, provided that the conditions referred to in Article 400(3) of that Regulation have been met;
c) The exposures referred to in Article 400(2)(d) of Regulation (EU) No 575/2013 shall be fully exempted from the application of Article 395(1) of the aforementioned Regulation, provided that the conditions referred to in Article 400(3) of that Regulation, as further detailed in the Annex to the present Regulation, have been met;
d) The exposures referred to in Article 400(2)(e) to (h), (j) and (k) of Regulation (EU) No 575/2013 shall be fully exempted from the application of Article 395(1) of the aforementioned Regulation, and the exposures referred to in Article 400(2)(i) shall be exempted up to the maximum amount authorised by that provision, provided that the conditions referred to in Article 400(3) of that Regulation have been met;
e) The institutions shall assess whether the conditions of Article 400(3) of Regulation (EU) No 575/2013, as further detailed in the Annex to the present Regulation, have been met.
The institutions shall make the documents referred to in the Annex to the present Regulation available to the NBB at its request.
TRANSITIONAL PROVISIONS
Article 17. For the purposes of Article 465(2) of Regulation No 575/2013, during the period from 1 January 2014 to 31 December 2014, the following own funds requirements shall apply:
a) a Common Equity Tier 1 capital ratio of 4 %;
b) a Tier 1 capital ratio of 5,5 %.

Article 18. For the purposes of Article 467(1) and (2), first subparagraph of Regulation No 575/2013, Article 35 of the Regulation shall not be derogated from during the period from 1 January 2014 to 31 December 2017.
By way of derogation from the first paragraph, the following percentages shall apply for the inclusion of unrealised losses on fixed-income securities and balance sheet credits in Common Equity Tier 1 Capital:
a) 20 % for the period from 1 January 2014 to 31 December 2014
b) 40 % for the period from 1 January 2015 to 31 December 2015
c) 60 % for the period from 1 January 2016 to 31 December 2016
d) 80 % for the period from 1 January 2017 to 31 December 2017.
Article 19. […]
Repealed.
Article 20. For the purposes of Article 468(1) and (2) of Regulation No 575/2013, Article 35 of the Regulation shall not be derogated from during the period from 1 January 2015 to 31 December 2017.
By way of derogation from the first paragraph, the following percentages shall apply for the exclusion of unrealised gains on fixed-income securities and balance sheet credits from Common Equity Tier 1 Capital:
a) 60 % for the period from 1 January 2015 to 31 December 2015
b) 40 % for the period from 1 January 2016 to 31 December 2016
c) 20 % for the period from 1 January 2017 to 31 December 2017.
Article 21. For the purposes of Article 468(4) of Regulation No 575/2013, Article 33(1)(c) of the Regulation shall not be derogated from during the period from 1 January 2014 to 31 December 2017.
Article 22. For the purposes of Article 469(1)(a) of Regulation No 575/2013, Article 36(1) of the Regulation shall not be derogated from during the period from 1 January 2014 to 31 December 2017.
By way of derogation from the first paragraph, the following percentages shall apply to deferred tax assets that rely on future profitability and do not arise from temporary differences:
a) 20 % for the period from 1 January 2014 to 31 December 2014
b) 40 % for the period from 1 January 2015 to 31 December 2015
c) 60 % for the period from 1 January 2016 to 31 December 2016
d) 80 % for the period from 1 January 2017 to 31 December 2017.

Article 23. Without prejudice to Article 22, for the purposes of Article 469(1)(c) of Regulation No 575/2013, Article 36(1) of the Regulation shall not be derogated from during the period from 1 January 2014 to 31 December 2017.
Article 24. For the purposes of Article 471(1) of Regulation No 575/2013, Article 49(1) of the Regulation shall not be derogated from.
Article 25. For the purposes of Article 473(1) of Regulation No 575/2013, Article 481 of the Regulation shall not be derogated from.
Article 26. For the purposes of point (a) of Article 474 of Regulation No 575/2013, Article 56 of the Regulation shall not be derogated from during the period from 1 January 2014 to 31 December 2017.
Article 27. For the purposes of point (a) of Article 476 of Regulation No 575/2013, Article 66 of the Regulation shall not be derogated from during the period from 1 January 2014 to 31 December 2017.
Article 28. For the purposes of Article 478(2) of Regulation No 575/2013, the first paragraph of the aforementioned Article shall not be derogated from.
Article 29. For the purposes of Article 479(1)(a), (b) and (d) of Regulation No 575/2013, Part Two, Title II of the Regulation shall not be derogated from during the period from 1 January 2014 to 31 December 2017.
Article 30. For the purposes of Article 479(1)(c) of Regulation No 575/2013, the following percentages shall apply:
a) 80 % for the period from 1 January 2014 to 31 December 2014
b) 60 % for the period from 1 January 2015 to 31 December 2015
c) 40 % for the period from 1 January 2016 to 31 December 2016
d) 20 % for the period from 1 January 2017 to 31 December 2017.
Article 31. For the purposes of Article 480(1) of Regulation No 575/2013, the following factors shall apply:
a) 0.2 for the period from 1 January 2014 to 31 December 2014
b) 0.4 for the period from 1 January 2015 to 31 December 2015
c) 0.6 for the period from 1 January 2016 to 31 December 2016
d) 0.8 for the period from 1 January 2017 to 31 December 2017).
Article 32. For the purposes of Article 481(1) of Regulation No 575/2013, without prejudice to the provisions laid down in the present Regulation pursuant to Articles 467 to 470, 472 and 474 to 477, Articles 32 to 36, 56 and 66 of Regulation No 575/2013 shall not be derogated from during the period from 1 January 2014 to 31 December 2017.

Article 33. For the purposes of Article 481(2) of Regulation No 575/2013, without prejudice to the provisions laid down in the present Regulation pursuant to Article 469, Article 36(1)(i) and Article 49(1) shall not be derogated from.
Article 34. For the purposes of Article 486 of Regulation No 575/2013, the following percentages of the amounts of the items and instruments referred to in the second to fourth paragraphs of the aforementioned Article shall be eligible as own funds:
a) 80 % during the period from 1 January 2014 to 31 December 2014;
b) 70 % during the period from 1 January 2015 to 31 December 2015;
c) 60 % during the period from 1 January 2016 to 31 December 2016;
d) 50 % during the period from 1 January 2017 to 31 December 2017;
e) 40 % during the period from 1 January 2018 to 31 December 2018;
f) 30 % during the period from 1 January 2019 to 31 December 2019;
g) 20 % during the period from 1 January 2020 to 31 December 2020);
h) 10 % during the period from 1 January 2021 to 31 December 2021).
Article 35. For the purposes of Article 495(1) of Regulation No 575/2013, equity exposures held by an institution as at 31 December 2017 may be exempted from the IRB Approach until 31 December 2017.
Article 36. Until 31 December 2017, institutions may exceed the 10 % limit set out in Article 129(1)(d) and (e) of Regulation No 575/2013 for senior units issued by French Fonds Communs de Créances under the terms laid down in Article 496(1)(a) and (b) of the Regulation.
Article 37. For the purposes of Article 499(3) of Regulation No 575/2013, institutions are allowed to only calculate an end-of-quarter leverage ratio during the period from 1 January 2014 to 31 December 2017.
Article 38. Pending the harmonisation of the leverage ratio in 2018, institutions shall permanently maintain a level of own funds that enables them to comply with the overall solvency ratio calculated using third-party funds using the following scale:
- first bracket: up to 25,000,000 €: 6 %
- second bracket: > 25,000,000 ≤ 125,000,000 €: 4 %
- third bracket: > 125,000,000 ≤ 250,000,000 €: 3 %
- fourth bracket: >250,000,000 ≤ 1,250,000,000 €: 2,5 %
- fifth bracket: over 1,250,000,000 €: 2 %.

OTHER PROVISIONS
Article 39. § 1. The Regulation of the National Bank of Belgium of 15 November 2011 on the own funds of credit institutions and investment firms shall be modified as follows:
Article I.1 shall be replaced by the following:
“Unless otherwise specified, the provisions of this Regulation shall apply to:
1° credit institutions within the meaning of Article 1, second paragraph, 1° and referred to in Title IV of the Law of 22 March 1993 on the legal status and supervision of credit institutions;
2° investment firms within the meaning of Article 44, first paragraph, and referred to in Title II of the Law of 6 April 1995 on the legal status and supervision of investment firms, insofar as they have obtained an authorisation as a stockbroking firm or as an asset management firm and insofar as they are not covered by Article 4(1)(2) of Regulation 575/2013.
3° the branches in Belgium of investment firms that are governed by non-European Union Member States, as referred to in Book II, Title IV of the Law of 6 April 1995 on the legal status and supervision of investment firms, and that have obtained an authorisation as a stockbroking firm or as an asset management company from the NBB or the FSMA.”
§ 2. The Regulation of the National Bank of Belgium of 15 November 2011 on the own funds of credit institutions and investment firms shall remain applicable, taking into account § 1.
Article 40. This Regulation shall enter into force on the date of publication of the Royal Decree approving it.
ANNEX
Conditions for assessing the exemption referred to in Article 400(2)(d) of Regulation (EU) No 575/2013 and in Article 16bis, point c) of this Regulation.
Article 1. For the purposes of this Annex, “institution” or “institutions” shall be understood to mean the credit institution or credit institutions referred to in Article 400(2)(d) of Regulation (EU) No 575/2013, insofar as this credit institution is or these credit institutions are not under the direct supervision of the European Central Bank pursuant to Article 6(4) of the SSM Regulation.
Article 2. § 1. Institutions shall apply the criteria referred to in points a) and b) to determine whether an exposure referred to in Article 400(2)(d) of Regulation (EU) No 575/2013 meets the exemption conditions set out in Article 400(3) of the aforementioned Regulation.
a) In order to determine whether the specific nature of the exposure, of the central body or of the regional entities with which the institution is associated in a network, or of the relationship between the institution and the central body or the regional entities eliminates or reduces the risk of the exposure in accordance with Article 400(3)(a) of Regulation (EU) No 575/2013, institutions shall verify whether:
i) there are any current or foreseen material practical or legal impediments to repayments of exposures when due by the counterparty of the institution, barring a recovery or resolution situation which requires the implementation of the limitations referred to in Directive 2014/59/EU of the European Parliament and of the Council;

ii) the exposures concerned are consistent with the normal operation and business model of the institution or are justified by the network financing structure;
iii) the decision-making process for approving an institution's exposure to the central body or to the regional entities and the monitoring and review procedure for these exposures are at the level of the institution and, where applicable, at the consolidated level, comparable with those implemented for approving an exposure to third parties;
iv) the institution's risk management processes, IT system and internal reporting enable continuous monitoring and assurance that the large exposures to the central body or to the regional entities comply with the institution's risk strategy.
b) In order to assess whether any remaining concentration risk can be addressed by other equally effective means such as the arrangements, processes and mechanisms provided for in Article 81 of Directive 2013/36/EU of the European Parliament and of the Council, in accordance with Article 400(3)(b) of Regulation (EU) No 575/2013, institutions shall verify whether:
i) the institution has robust processes, procedures and checks to ensure that use of the exemption does not result in a concentration risk that exceeds the scope of its risk strategy;
ii) the institution has formally taken into account the concentration risk arising from exposures to the central body or to the regional entities as part of its overall risk assessment framework;
iii) the institution has a risk management framework that adequately monitors the exposures concerned;
iv) the arising concentration risk has been or will be clearly identified in the institution's Internal Capital Adequacy Assessment Process (ICAAP) and will be actively managed. The arrangements, processes and mechanisms for concentration risk management will be assessed during the Supervisory Review and Evaluation Process (SREP).
§ 2. Moreover, in order to assess whether the central body or a regional entity with which the institution is associated in a network, is responsible for cash-clearing operations as referred to in Article 400(2)(d) of Regulation (EU) No 575/2013, institutions shall verify whether the statutes or instruments of incorporation of the central body or of the regional entities explicitly state that their responsibilities include:
a) market financing for the entire network;
b) cash-clearing operations within the network in accordance with Article 10 of Regulation (EU) No 575/2013;
c) provision of liquidity to affiliated institutions;
d) absorption of the excess liquidity of affiliated institutions.
§ 3. In order to verify whether the conditions of the first and second paragraph are met, institutions shall make the following documents available to the NBB at its request:
a) a letter signed by the institution's legal representative and approved by the statutory governing body stating that the institutions meets all of the conditions referred to in Article 400(3) of Regulation (EU) No 575/2013 to benefit from an exemption as referred to in Article 400(2)(d) of the same Regulation;

b) legal advice approved by the statutory governing body from either an independent external legal adviser or from the internal legal service which confirms that there are no impediments to repayment when due of the institution's exposures to the central body or to the regional entities arising either from provisions made applicable to these exposures by or pursuant to the Law, including tax provisions, or from binding contractual provisions;
c) a statement signed by the legal representative and approved by the statutory governing body declaring that:
i) there are no practical impediments to repayments of the exposures of the institution to the central body or to the regional entities when due;
ii) the network financing structure justifies the exposures to the central body or to the regional entities;
ii) the decision-making process for approving an exposure to the central body or to the regional entities and the monitoring and review procedure for these exposures are at the institutional and the consolidated level comparable with those applied to exposures to third parties;
iv) the concentration risk arising from exposures to the central body or to the regional entities has been taken into account as part of the institution's overall risk assessment framework;
d) documents signed by the legal representative and approved by the statutory governing body stating that the institution's risk assessment, measurement and control procedures are identical to those of the central body and of the regional entities, and that the institution's risk management procedures, IT system and internal reporting enable the statutory governing body to continuously monitor the level of large exposures and to continuously verify whether this level is consistent with the institution's risk strategy at both the institutional and, where applicable, the consolidated level, and with the principles for sound internal liquidity management within the network;
e) documents demonstrating that the Internal Capital Adequacy Assessment Process (ICAAP) clearly identifies the concentration risk arising from large exposures to the central body or to the regional entities, and that this risk is actively managed;
f) documents demonstrating that the concentration risk management is consistent with the network recovery plan.