
 (bank or savings bank)

Assessment of compliance of Additional Tier 1 instrument

(name of instrument)		
Legal provision prescribing condition for capital instrument	(article and wording from contract or other documentation related to meeting required condition for capital instrument)	(reasoned self-assessment of meeting of condition)
Article 52 of Regulation (EU) No 575/2013¹		
1. Capital instruments shall qualify as Additional Tier 1 instruments only if the following conditions are met:		
(a) the instruments are directly issued by an institution and fully paid up;		
(b) the instruments are not owned by any of the following:		
(i) the institution or its subsidiaries;		
(ii) an undertaking in which the institution has a participation in the form of ownership, direct or by way of control, of 20 % or more of the voting rights or capital of that undertaking;		
(c) the acquisition of ownership of the instruments is not funded directly or indirectly by the institution;		
(in relation to Articles 8 and 9 of RTS No 241/2014 ²)		
(d) the instruments rank below Tier 2 instruments in		

¹ 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 L 176 of 27 June 2013, p 1)

² Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for own funds requirements for institutions (OJ L 74 of 14 March 2014, p 8)

the event of the insolvency of the institution;		
(e) the instruments are neither secured nor subject to a guarantee that enhances the seniority of the claims by any of the following:		
(i) the institution or its subsidiaries;		
(ii) the parent undertaking of the institution or its subsidiaries;		
(iii) the parent financial holding company or its subsidiaries;		
(iv) the mixed activity holding company or its subsidiaries;		
(v) the mixed financial holding company or its subsidiaries;		
(vi) any undertaking that has close links with entities referred to in points (i) to (v);		
(f) the instruments are not subject to any arrangement, contractual or otherwise, that enhances the seniority of the claim under the instruments in insolvency or liquidation;		
(g) the instruments are perpetual and the provisions governing them include no incentive for the institution to redeem them;		
(in relation to Article 20 of RTS No 241/2014)		
(h) where the instruments include one or more early redemption options including call options, the options are exercisable at the sole discretion of the issuer;		
(i) the instruments may be called, redeemed or repurchased only where the conditions laid down in Article 77 are met, and not before five years after the date of issuance except where the conditions laid down in Article 78(4) are met;		
(j) the provisions governing the instruments do not indicate explicitly or implicitly that the instruments would be called, redeemed or repurchased, as applicable, by the institution other than in the case of the insolvency or liquidation of the institution and the institution does not		

otherwise provide such an indication;		
(k) the institution does not indicate explicitly or implicitly that the competent authority would consent to a request to call, redeem or repurchase the instruments;		
(l) distributions under the instruments meet the following conditions:		
(i) they are paid out of distributable items;		
(ii) the level of distributions made on the instruments will not be amended on the basis of the credit standing of the institution or its parent undertaking;		
(iii) the provisions governing the instruments give the institution full discretion at all times to cancel the distributions on the instruments for an unlimited period and on a non-cumulative basis, and the institution may use such cancelled payments without restriction to meet its obligations as they fall due;		
(iv) cancellation of distributions does not constitute an event of default of the institution;		
(v) the cancellation of distributions imposes no restrictions on the institution;		
(in relation to Article 53 of Regulation (EU) No 575/2013)		
(m) the instruments do not contribute to a determination that the liabilities of an institution exceed its assets, where such a determination constitutes a test of insolvency under applicable national law;		
(n) the provisions governing the instruments require that, upon the occurrence of a trigger event, the principal amount of the instruments be written down on a permanent or temporary basis or the instruments be converted to Common Equity Tier 1 instruments;		
(in relation to Articles 21 and 22 of RTS No 241/2014)		

<p>(o) the provisions governing the instruments include no feature that could hinder the recapitalisation of the institution;</p>		
<p>(in relation to Article 53 of Regulation (EU) No 575/2013 and Article 23 of RTS No 241/2014)</p>		
<p>(p) where the issuer is established in a third country and has been designated in accordance with Article 12 of Directive 2014/59/EU as part of a resolution group the resolution entity of which is established in the Union or where the issuer is established in a Member State, the law or contractual provisions governing the instruments require that, upon a decision by the resolution authority to exercise the write-down and conversion powers referred to in Article 59 of that Directive, the principal amount of the instruments is to be written down on a permanent basis or the instruments are to be converted to Common Equity Tier 1 instruments;</p> <p>where the issuer is established in a third country and has not been designated in accordance with Article 12 of Directive 2014/59/EU as part of a resolution group the resolution entity of which is established in the Union, the law or contractual provisions governing the instruments require that, upon a decision by the relevant third-country authority, the principal amount of the instruments is to be written down on a permanent basis or the instruments are to be converted into Common Equity Tier 1 instruments;</p>		
<p>(q) where the issuer is established in a third country and has been designated in accordance with Article 12 of Directive 2014/59/EU as part of a resolution group the resolution entity of which is established in the Union or where the issuer is established in a Member State, the instruments may only be issued under, or be otherwise subject to the laws of a third country where, under those</p>		

laws, the exercise of the write-down and conversion powers referred to in Article 59 of that Directive is effective and enforceable on the basis of statutory provisions or legally enforceable contractual provisions that recognise resolution or other write-down or conversion actions;		
(r) the instruments are not subject to set-off or netting arrangements that would undermine their capacity to absorb losses.		
Article 54 of Regulation (EU) No 575/2013		
1. For the purposes of point (n) of Article 52(1), the following provisions shall apply to Additional Tier 1 instruments:		
(in relation to Articles 21 and 22 of RTS No 241/2014)		
(a) a trigger event occurs when the Common Equity Tier 1 capital ratio of the institution referred to in point (a) of Article 92(1) falls below either of the following:		
(i) 5,125 %;		
(ii) a level higher than 5,125 %, where determined by the institution and specified in the provisions governing the instrument;		
(b) institutions may specify in the provisions governing the instrument one or more trigger events in addition to that referred to in point (a);		
(c) where the provisions governing the instruments require them to be converted into Common Equity Tier 1 instruments upon the occurrence of a trigger event, those provisions shall specify either of the following:		
(i) the rate of such conversion and a limit on the permitted amount of conversion;		
(ii) range within which the instruments will convert into Common Equity Tier 1 instruments;		
(d) where the provisions governing the instruments require their principal amount to be written down upon the occurrence of a trigger event, the write		

down shall reduce all the following:		
(i) the claim of the holder of the instrument in the insolvency or liquidation of the institution;		
(ii) the amount required to be paid in the event of the call or redemption of the instrument;		
(iii) the distributions made on the instrument;		
(e) where the Additional Tier 1 instruments have been issued by a subsidiary undertaking established in a third country, the 5,125 % or higher trigger referred to in point (a) shall be calculated in accordance with the national law of that third country or contractual provisions governing the instruments, provided that the competent authority, after consulting EBA, is satisfied that those provisions are at least equivalent to the requirements set out in this Article.		
2. Write down or conversion of an Additional Tier 1 instrument shall, under the applicable accounting framework, generate items that qualify as Common Equity Tier 1 items.		
3. The amount of Additional Tier 1 instruments recognised in Additional Tier 1 items is limited to the minimum amount of Common Equity Tier 1 items that would be generated if the principal amount of the Additional Tier 1 instruments were fully written down or converted into Common Equity Tier 1 instruments.		
4. The aggregate amount of Additional Tier 1 instruments that is required to be written down or converted upon the occurrence of a trigger event shall be no less than the lower of the following:		
(in relation to Article 21 of RTS No 241/2014)		
(a) the amount required to restore fully the Common Equity Tier 1 ratio of the institution to 5,125 %;		
(b) the full principal amount of the instrument.		
5. When a trigger event occurs institutions shall do the following:		
(in relation to Article 22 of RTS No 241/2014)		

(a) immediately inform the competent authorities;		
(b) inform the holders of the Additional Tier 1 instruments;		
(c) write down the principal amount of the instruments, or convert the instruments into Common Equity Tier 1 instruments without delay, but no later than within one month, in accordance with the requirement laid down in this Article.		
6. An institution issuing Additional Tier 1 instruments that convert to Common Equity Tier 1 on the occurrence of a trigger event shall ensure that its authorised share capital is at all times sufficient, for converting all such convertible Additional Tier 1 instruments into shares if a trigger event occurs. All necessary authorisations shall be obtained at the date of issuance of such convertible Additional Tier 1 instruments. The institution shall maintain at all times the necessary prior authorisation to issue the Common Equity Tier 1 instruments into which such Additional Tier 1 instruments would convert upon occurrence of a trigger event.		
7. An institution issuing Additional Tier 1 instruments that convert to Common Equity Tier 1 on the occurrence of a trigger event shall ensure that there are no procedural impediments to that conversion by virtue of its incorporation or statutes or contractual arrangements.		
Article 73 of Regulation (EU) No 575/2013		
1. Capital instruments and liabilities for which an institution has the sole discretion to decide to pay distributions in a form other than cash or own funds instruments shall not be eligible to qualify as Common Equity Tier 1, Additional Tier 1, Tier 2 or eligible liabilities instruments, unless the institution has received the prior permission of the competent authority.		