

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

In case of discrepancies between the French and the English text, the French text shall prevail

CSSF Regulation N° 15-01 on the calculation of institution-specific countercyclical capital buffer rates, transposing Article 140 of Directive 2013/36/EU

(Mémorial A – No. 161 of 14 August 2015)

The Executive Board of the Commission de Surveillance du Secteur Financier,

Having regard to Article 108a of the Constitution;

Having regard to the law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier") and in particular Article 9(2) thereof;

Having regard to the law of 5 April 1993 on the financial sector, and in particular Articles 59-6 and 59-7 thereof;

Having regard to 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;

Having regard to 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 Article 140 thereof;

Having regard to Commission Delegated Regulation (EU) No 1152/2014 of 4 June 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards on the identification of the geographical location of the relevant credit exposures for calculating institution-specific countercyclical capital buffer rates;

Having regard to Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC;

Having regard to the opinion of the Consultative Committee for Prudential Regulation;

Decides:

Article 1 Scope

This Regulation shall apply to all the institutions referred to in point (3) of Article 4(1) of Regulation (EU) No 575/2013, hereinafter "CRR institutions", as well as to the Luxembourg branches of such institutions incorporated in a third country, hereinafter deemed to be included in the notion of CRR institutions.

Article 2 Weighted average of the countercyclical buffer rates

The institution-specific countercyclical capital buffer rate that every CRR institution shall calculate by virtue of Article 59-6 of the law of 5 April 1993, shall consist of the weighted average of the countercyclical buffer rates that apply in the State where the relevant credit exposures of the CRR institution are located or are applied by virtue of Article 59-7(9) or (10) of the law of 5 April 1993.

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

In order to calculate the weighted average referred to in the first subparagraph, CRR institutions shall apply to each applicable countercyclical buffer rate their total own funds requirements for credit risk, determined in accordance with Part Three, Titles II and IV of Regulation (EU) No 575/2013, that relate to the relevant credit exposures in the territory in question, divided by their total own funds requirements for credit risk that relate to all of their relevant credit exposures.

Article 3 Applicable countercyclical buffer rate where the designated authority of a Member State sets a rate in excess of 2.5%

Where the CSSF sets, in accordance with Article 59-7(4) of the law of 5 April 1993, a countercyclical buffer rate in excess of 2.5% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, the CRR institutions authorised in Luxembourg shall apply this rate to the relevant credit exposures located in Luxembourg.

Where the authority of another Member State or of a State which is party to the European Economic Area Agreement, deemed to be included in the notion of Member State for the purpose of this regulation, (hereafter "Member State A") sets a countercyclical buffer rate in excess of 2.5% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, the following countercyclical buffer rates shall apply for the purposes of the calculation required under Article 2 of this regulation:

- a) the CRR institutions authorised in Luxembourg shall apply to the relevant credit exposures located in Member State A the countercyclical buffer rate in excess of 2.5% of the total risk exposure amount, if the CSSF has recognised this countercyclical buffer rate in excess of 2.5%. If there has been no such recognition, these CRR institutions shall apply a countercyclical buffer rate of 2.5% to the relevant credit exposures located in Member State A;

For the purposes of the calculation of the part of consolidated capital that relates to the CRR institution in question,

- b) the CRR institutions authorised in another Member State shall apply to the relevant credit exposures located in Member State A the countercyclical buffer rate in excess of 2.5% of the total risk exposure amount, if the designated authority of the Member State in which they have been authorised has recognised the countercyclical buffer rate in excess of 2.5%. If there has been no such recognition, these CRR institutions shall apply a countercyclical buffer rate of 2.5% to the relevant credit exposures located in Member State A;
- c) the CRR institutions authorised in Member State A shall apply the countercyclical buffer rate in excess of 2.5% of the total risk exposure amount to the relevant credit exposures located in Member State A.

Article 4 Applicable countercyclical buffer rate where the relevant third-country authority sets a rate in excess of 2.5%

Where the relevant third-country authority sets a countercyclical buffer rate in excess of 2.5% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, the following countercyclical buffer rates shall apply to the relevant credit exposures located in that third country for the purposes of the calculation required under Article 2 of this regulation:

- a) the CRR institutions authorised in Luxembourg shall apply to the relevant credit exposures located in the third country the countercyclical buffer rate in excess of 2.5% of the risk exposure amount, if the CSSF has recognised this countercyclical buffer rate in excess of 2.5%. If there has been no such recognition, these CRR institutions shall apply a

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

countercyclical buffer rate of 2.5% to the relevant credit exposures located in the third country;

For the purposes of the calculation of the part of consolidated capital that relates to the CRR institution in question,

- b) the CRR institutions authorised in another Member State shall apply to the relevant credit exposures located in the third country the countercyclical buffer rate in excess of 2.5% of the total risk exposure amount, if the designated authority of the Member State in which they have been authorised has recognised the countercyclical buffer rate in excess of 2.5%. If there has been no such recognition, these CRR institutions shall apply a countercyclical buffer rate of 2.5% to the relevant credit exposures located in the third country.

Article 5 Relevant credit exposures

Relevant credit exposures shall include all those exposure classes, other than those referred to in points (a) to (f) of Article 112 of Regulation (EU) No 575/2013, that are subject to:

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

Article 6 Identification of the geographical location of a relevant credit exposure

The CRR institutions shall identify the geographical location of a relevant credit exposure in accordance with the regulatory technical standards adopted by the European Commission by virtue of Articles 10 to 14 of Regulation (EU) No 1093/2010, in particular in accordance with the regulatory technical standards in Delegated Regulation (EU) No 1152/2014.

Article 7 Date of application of the countercyclical buffer rate for a Member State or a third country

For the purposes of the calculation required under Article 2 of this regulation:

- a) a countercyclical buffer rate for a Member State shall apply from the date specified in the information published in accordance with Article 59-7(7) or (8) of the law of 5 April 1993, where Luxembourg is concerned, or in accordance with the national provisions transposing point (e) of Article 136(7) and point (c) of Article 137(2) of Directive 2013/36/EU where other Member States are concerned, if the effect of that decision is to increase this buffer rate;
- b) subject to point (c), a 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 CRR institutions incorporated in that third country to apply the change within a shorter period, if the effect of that decision is to increase the buffer rate;
- c) where the CSSF sets the countercyclical buffer rate for a third country pursuant to Article 59-7(9) or (10) of the law of 5 April 1993, or recognises the countercyclical buffer rate in excess of 2.5% set for a third country in accordance with Article 59-7(8) of the law of 5 April 1993, this buffer rate shall apply from the date specified in the information published in accordance with Article 59-7(12) or (8), respectively, of the law of 5 April 1993, if that decision is to increase this buffer rate;

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

- d) a countercyclical buffer rate shall apply immediately if the effect of that decision is to reduce this buffer rate.

For the purposes of point (b), a 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 rules.

Article 8 Publication

This regulation shall be published in the Mémorial and on the website of the Commission de Surveillance du Secteur Financier.

Luxembourg, 31 July 2015

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

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EXPLANATORY MEMORANDUM

The regulatory power of the CSSF is based on Article 108a of the Constitution which provides that the law may grant a public institution the power to make regulations within the limits of its field of expertise. This power is laid down in the law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended, inter alia, by the law of 24 October 2008 improving the legislative framework of the Luxembourg financial centre. In accordance with the latter, the Executive Board of the CSSF makes CSSF regulations in the framework of its prudential supervisory mission.

Following the attribution to the CSSF of the competence to act as designated authority responsible for setting the countercyclical buffer rate applicable in Luxembourg and to ensure compliance with the corresponding requirements, it is for the CSSF to specify the implementation arrangements.

The purpose of this CSSF regulation is to specify the method of calculating the level of the "institution-specific countercyclical capital buffer rate" that the CRR institutions must hold by virtue of Article 59-6 of the law of 5 April 1993 on the financial sector. Thus, it transposes Article 140 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.

COMMENTS ON THE ARTICLES

Comments on Article 1:

No comment.

Comments on Article 2:

Article 2 specifies that the CRR institutions shall calculate their own specific buffers as being equal to the weighted average of the countercyclical buffer rates that apply in the country in which these institutions have credit exposures.

This article provides that the rates shall be either those that apply in the countries where the relevant credit exposures are located or those set by the CSSF in accordance with Article 59-7(9) and (10) of the law of 5 April 1993 on the financial sector. Paragraphs (9) and (10) refer to cases where the relevant third-country authority has neither set nor published a buffer rate for this third country and to the case where the relevant third-country authority has set and published a buffer rate but where that this rate is deemed insufficient given possible excessive credit risk growth.

Comments on Article 3:

The buffer rates that the CRR institutions must consider are those set by the designated authorities of the Member States in which the relevant credit exposures are located. The principle is that of the automatic recognition of buffer rates that are not in excess of 2.5%. Where the rates are in excess of 2.5%, several scenarios must be distinguished.

Where the CSSF sets a rate in excess of 2.5%, there is no need for recognition and the CRR institutions authorised in Luxembourg shall apply this rate to the relevant credit exposures located in Luxembourg.

Where the designated authority of another Member State sets a rate in excess of 2.5%, the CRR institutions authorised in Luxembourg shall apply this rate in excess of 2.5%, except if the CSSF does not recognise this rate. In this specific case, the rate shall be capped at 2.5%.

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

There are two other specific cases of calculating the countercyclical capital buffer at consolidated level where the consolidation takes place in Luxembourg.

Firstly, where another Member State sets a rate in excess of 2.5% (Member State A), the CRR institutions authorised in another Member State (Member State B) shall apply this rate in excess of 2.5% to the relevant exposures located in Member State A, except if the designated authority of Member State B does not recognise this rate. In this specific case, the rate shall be capped at 2.5%. The question that this paragraph intends to resolve is whether the buffer rate to be considered for the calculation of the part of consolidated capital that relates to the CRR institution concerned depends on the recognition by the designated authority of the country in which this CRR institution has been authorised (Member State A) or on the recognition by the CSSF. This paragraph decides in favour of the recognition by the designated authority of Member State A and not in favour of the designated authority of the Member State in which the consolidation takes place (Luxembourg). It may be noted that the situation in question should be quite exceptional in practice as Recommendation ESRB 2014/1 of 18 June 2014 on guidance for setting countercyclical buffer rates provides in Principle A.6 that "designated authorities should generally recognise the countercyclical buffer rates [set in excess of the mandatory level] applied in other Member States", so that the cases where Member States set rates in excess of 2.5% should rarely not be recognised by the other Member States.

Secondly, where another Member State sets a rate in excess of 2.5% (Member State A), the CRR institutions authorised in this other Member State (Member State A) shall apply this rate. In other words, the absence of recognition by the CSSF of this rate in excess of 2.5% should not have as a consequence a capping of the rate at 2.5%.

Comments on Article 4:

The buffer rates that the CRR institutions must consider are those set by the designated authorities of the third countries in which the relevant credit exposures are located. The principle is that of the automatic recognition of buffer rates that are not in excess of 2.5%. Where the rates are in excess of 2.5%, two scenarios must be distinguished.

Where a third country sets a rate in excess of 2.5%, the CRR institutions authorised in Luxembourg shall apply this rate in excess of 2.5%, except if the CSSF does not recognise this rate. In this specific case, the rate shall be capped at 2.5%.

There is one specific case of calculating the countercyclical capital buffer at consolidated level where the consolidation takes place in Luxembourg. Where a third country sets a rate in excess of 2.5%, the CRR institutions authorised in a Member State other than Luxembourg shall apply this rate in excess of 2.5% to the relevant exposures in the third country, except where the designated authority of this other Member State in which the CRR institutions have been authorised does not recognise this rate. In this specific case, the rate shall be capped at 2.5%. The question that this paragraph intends to resolve is, again, whether the buffer rate to be considered for the calculation of the part of consolidated capital that relates to the CRR institution concerned depends on the recognition by the designated authority of this other Member State in which this CRR institution has been authorised or on the recognition by the CSSF. This paragraph decides in favour of the recognition by the designated authority of the Member State in which the CRR institution has been authorised and not in favour of the designated authority of the Member State in which the consolidation takes place (Luxembourg).

Comments on Article 5:

No comment.

Comments on Article 6:

No comment.

**COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER**

Comments on Article 7:

No comment.

Comments on Article 8:

No comment.