

PUBLIC DECREE,
announcing a

MEASURE OF A GENERAL NATURE

on minority interests and instruments included in Additional Tier 1 capital and Tier 2 capital issued by subsidiaries

The Czech National Bank, as the competent authority, issues, pursuant to Article 20d(1) of Act No. 21/1992 Coll., on banks, as amended by Act No. 135/2014 Coll., Article 9a(1) of Act No. 87/1995 Coll., on credit unions and some related measures and on the amendment of Czech National Council Act No. 586/1992 Coll., on income taxes, as amended, as amended by Act No. 135/2014 Coll. (hereinafter the “Act on Credit Unions”) and Article 199(5) of Act No. 256/2004 Coll., on capital market undertakings, as amended by Act No. 135/2014 Coll., this measure of a general nature to Article 465(2) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012 (hereinafter the “Regulation”):

I. A bank, credit union and investment firm pursuant to Article 8a(1), (2) and (3) of the Capital Market Undertakings Act shall not include in Common Equity Tier 1 capital on consolidated basis instruments and items that do not qualify as minority interests pursuant to Part two Title II of the Regulation. The applicable percentage for the purposes of Article 479(2) of the Regulation is 0%.

II. A bank, credit union and investment firm pursuant to Article 8a(1), (2) and (3) of the Capital Market Undertakings Act shall multiply the percentage for the purposes of Article 84(1)(b), Article 85(1)(b) and Article 87(1)(b) of the Regulation by an applicable factor with the value of 1.

Justification

1. Pursuant to Article 20d(1) of the Banking Act, Article 9(1) of the Act on Credit Unions and Article 199(5) of the Capital Market Undertakings Act, the Czech National Bank may issue a measure of a general nature on the basis of and within the bounds of the directly applicable European Union law governing prudential requirements where this directly applicable law allows the competent authority to grant a waiver or modify the use of the stipulated rules for banks or a group of type-designated banks, credit unions or a group of type-designated credit unions or investment firms or a group of type-designated investment firms. The Regulation is the directly applicable European Union law governing the prudential requirements.

2. In accordance with the statutory empowerment, the Czech National Bank exercises the power to modify, on the basis of and within the bounds of the Regulation, the application of stipulated rules that are relevant to credit institutions¹, investment firms² or other entities³.

¹ Article 4(1) point 1 of the Regulation.

² Article 4(1) point 2 of the Regulation.

³ For example, a financial institution pursuant to Article 4(1) point 26 of the Regulation or an ancillary services undertaking pursuant to Article 4(1) point 18 of the Regulation.

3. The Czech National Bank stipulates through this measure of a general nature to what extent a bank, credit union and investment firm pursuant to Article 8a(1), (2) and (3) of the Capital Market Undertakings Act may include holdings by minority shareholders (minority interests⁴) under Article 65 of Directive 2006/48/EC of the European Parliament and of the Council⁵ that do not meet the quality requirements pursuant to the Regulation, into Common equity Tier 1 capital on a consolidated basis and also to what extent they can include into the relevant tier of capital on a consolidated basis minority interests or qualified capital instruments issued by subsidiaries.

4. Pursuant to Article 479(1) of the Regulation, by way of derogation from Title II of Part Two, during the period from 1 January 2014 to 31 December 2017, recognition in own funds on consolidated basis of the items that would qualify as consolidated reserves in accordance with national transposition measures for Article 65 of Directive 2006/48/EC that do not qualify as Common Equity Tier 1 capital on consolidated basis for any of the following reasons shall be determined by the competent authorities in accordance with paragraphs 2 and 3 of that Article:

- a) the instrument does not qualify as a Common Equity Tier 1 instrument, and the related retained earnings and share premium accounts consequently do not qualify as consolidated Common Equity Tier 1 items,
- b) the items do not qualify as a result of Article 81(2),
- c) the items do not qualify because the subsidiary is not an institution⁶ or an entity that is subject by virtue of applicable national law to the requirements of the Regulation and Directive 2013/36/EU,
- d) the items do not qualify because the subsidiary is not included fully in the consolidation pursuant to Chapter 2 of Title II of Part One.

5. The applicable percentage of the items pursuant to Article 479(1) that would have qualified as consolidated reserves in accordance with the national transposition measures for Article 65 of Directive 2006/48/EC shall qualify as consolidated Common Equity Tier 1 capital.

6. For the purposes of Article 479(2) of the Regulation, the applicable percentages shall fall within the following ranges:

- a) 0% to 80% for the period from 1 January 2014 to 31 December 2014,
- b) 0% to 60% for the period from 1 January 2015 to 31 December 2015,
- c) 0% to 40% for the period from 1 January 2016 to 31 December 2016,
- d) 0% to 20% for the period from 1 January 2017 to 31 December 2017.

7. The Czech National Bank is acting on the basis of Article 479(4) of the Regulation, pursuant to which the competent authorities shall determine and publish the applicable percentage in the ranges pursuant to Article 479(3) of the Regulation.

8. Pursuant to Article 480(1) of the Regulation, by way of derogation from point (b) of Article 84(1), point (b) of Article 85(1) and point (b) of Article 87(1), during the period from 1 January 2014 to 31 December 2017, the percentages referred to in those Articles shall be multiplied by an applicable factor.

9. For the purposes of Article 480(1) of the Regulation, the applicable factor shall fall within the following ranges:

- a) 0.2 to 1 in the period from 1 January 2014 to 31 December 2014,
- b) 0.4 to 1 in the period from 1 January 2015 to 31 December 2015,

⁴ Article 4(1) point 120 of the Regulation.

⁵ Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions.

⁶ Article 4(1) point 3 of the Regulation.

- c) 0.6 to 1 in the period from 1 January 2016 to 31 December 2016,
- d) 0.8 to 1 in the period from 1 January 2017 to 31 December 2017.

10. The Czech National Bank is acting on the basis of Article 480(3) of the Regulation, pursuant to which the competent authorities shall determine and publish the applicable factor in the ranges pursuant to Article 480(2) of the Regulation.

11. The initial basis used for determining the amount of the applicable percentage in the ranges pursuant to Article 479(3) of the Regulation and the applicable factor in the ranges pursuant to Article 480(2) of the Regulation in the given amount is the evaluation of the potential impacts of the planned regulation that the Czech National Bank carried out in 2013. The evaluation of the impacts of the regulation was carried out based on information directly provided by the institution over which the Czech National Bank performs supervision. Emphasis was placed on data on an individual basis. The relevant data were obtained from all banks, a significant majority of credit unions and the majority of investment firms. With regard to the degree of involvement of key institutions, the obtained data can in aggregate be to be considered highly representative. The result of the evaluation is an impact study. This study was set parametrically in such a scope that it reflected the requirements that the regulated institutions shall have to comply with after the end of the transitional period. This period is defined in the Regulation and the relevant supervisory authorities are, during this period, authorized to set the requirements mostly within a smaller scope than the scope of the requirements after the end of the transitional period. The impact study showed that the amount of capital of the vast majority of institutions reaches such a level that is sufficient to ensure that these institutions meet the requirements without any restrictions under the Regulation in full from the beginning of their usability.

12. Based on the above facts, the Czech National Bank concludes that for objective reasons there is no need, during the transitional period, to mitigate the scope of the requirements applied pursuant to the Regulation in the area of capital and capital ratios. A mitigation of the scope of the requirements imposed on domestic institutions is also not desirable from the perspective of care for the safe operation of the financial system in the Czech Republic and the maintenance of financial stability. The fact that this only applied during the transitional period cannot, in this context, be taken as a relevant assertion, since after the expiry of the given period there shall be an expansion of the scope of requirements. The practical impacts of this fact would essentially mean a need for the creation and maintenance of increased minimum capital. Ultimately, a situation could occur that some institutions that would, in the meantime, use the possibility of maintaining minimum capital at a reduced rate, would then have to increase their capital to prevent a breach of legal obligations. The Czech National Bank therefore considers it vital to actively prevent the indicated possible situations, for which it uses the respective powers given to it through individual legal regulations.

13. The draft of this measure of a general nature was being published from 25 August 2014 to 15 September 2014 on the notification board of the Czech National Bank and in a manner enabling remote access, while no comments were raised with regard to the draft.

Entry into force

This measure of a general nature shall enter into force on 5 November 2014.

Ing. Mojmír Hampl, MSc., Ph.D., duly signed
Vice-Governor

Ing. Pavel Hollmann, MBA, duly signed
Executive Director, Financial Market
Regulation And International Co-Operation
Department

official stamp

Issuing procedure

This measure of a general nature was published on 5 November 2014.