Single Rulebook Q&A

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Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Own funds
Article	38, 48
Paragraph	3, 1
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	Not applicable
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Disclose name of institution / entity	No
Type of submitter	Competent authority
Subject matter	Netting of DTAs and DTLs
Question	1. For the purposes of netting DTAs and DTLs, Art. 38 (5) Regulation (EU) No 575/2013 (CRR) requires a pro rata allocation of DTLs between DTAs which are below the 10%-threshold mentioned in Art. 48 (1) (a) CRR and all other DTAs, which rely on future profitability. With this requirement, it seems that institutions are not permitted to net DTAs and DTLs before they enter into the threshold treatment (as the pro rata relation for the allocation of DTLs has to be fixed already based on those which are below the threshold), which seems to be different from the rules as set out in the Basel III framework. Could the EBA or the EU Commission confirm that Art. 38 (5) CRR indeed requires a different procedure for allocating DTLs to DTAs which rely on future profitability than the one set out in the Basel III text? 2. If the above understanding of the CRR text is confirmed, could the EBA or the EU Commission clarify whether the 10% basket mentioned in Art. 48 (1) CRR may only be filled with gross DTAs or whether an iterative calculation is permissible under the CRR? 3. If the suggested iterative calculation is permissible, we also seek clarification on how and at which point the proportion between the DTLs that may be allocated to DTAs related to temporary differences and those that may be allocated to other DTAs relying on future profitability is established. 3. If the suggested iterative calculation

	is permissi-ble, we also seek clarification on how and at which point the proportion between the DTLs that may be allocated to DTAs related to temporary differences and those that may be allocated to other DTAs relying on future profitability is established.
Background on the question	1. It seems that institutions are not permitted to net DTAs and DTLs before they enter into the thresh-old treatment. The idea in the Basel text rather is to do the net-ting before deducting DTAs which rely on future profitability and which do not arise from temporary differences in full and allocating those that rely on future profitability and which arise from temporary differences to the treatment set out in Art. 48 of the CRR. This is what is set out in the last sentence of para 69 of the Basel III text which says that "The DTLs permitted to be netted against DTAs [...] must be allocated on a pro rata basis between DTAs subject to the threshold deduction treatment [i.e. all DTAs that rely on future profitability and arise form temporary differences] and DTAs that are to be deducted in full." The pro rata allocation of DTLs between those DTAs that are below the 10%-threshold and all other DTAs is not required according to the Basel text. It rather requires a pro rata allocation be-tween those DTAs, which are treated according to Art. 48 of the CRR (regardless whether these are below one of the thresholds or have to be deducted at the end of the day because they exceed the threshold) and all other DTAs which have to be deducted in full in the first place. This understanding is also supported by the calculation set out in the templates used for the Basel III monitoring exercise conducted by the Basel Committee on Banking Supervision (see lines panel B 3, rows 107 to 113 and panel B 14, rows 236 to 238 of the template). The difference between the two allocation procedures is set out in the following example: DTAs relying on future profitability and arising from temporary differences: 20 DTAs relying on future profitability and not arising from temporary differences (Art. 38 (5) (b) CRR): 10 associated DTLs (Art. 38 (3) and (4) CRR): 18 threshold amount (Art. 48 (1) (a) CRR): 10 Basel III: a. DTAs arising from temporary differences - associated DTLs: 20 – 12 = 8 b. DTAs not arising from temporary differences - asso-ciated DTLs: 10-6 = 4 Amount to be deducted: 4 (b.) Amount to be riskweighted: 8 (a.) CRR: a. DTAs arising from temporary differences ≤ 10% threshold - associated DTLs: 10 – 6 = 4 b. DTAs arising from temporary differences ≥ 10% threshold - associated DTLs: 10 – 6 = 4 c. DTAs not arising from temporary differences - asso-ciated DTLs: 10-6 = 4 Amount to be deducted: 8 (b. + c.) Amount to be riskweighted: 4 (a.) 2. If the above understanding of the CRR text is confirmed, the question arises whether institutions have to fill the 10% basket on a gross basis only or whether they may, depending on the amount and structure of their DTLs do an iterative calculation, which allows them to fill the 10% basket on a gross basis first than do the netting calculation, fill up the netted amount again with gross DTAs, do the netting calculation again, fill up the netted amount again etc. until they finally reach the 10% limit.
Final answer	

	Article 38(3) of Regulation (EU) No. 575/2013 (CRR) lays down the conditions for netting Deferred Tax Assets (DTAs) with associated Deferred Tax Liabilities (DTLs). Article 38(3) of the CRR provides that those conditions apply to all DTAs relying on future profitability and does not distinguish between those DTAs that are deducted and DTAs that are not deducted. In accordance with Article 38(3) of the CRR, the 10% threshold mentioned in Article 48(1) should comprise net DTAs. In addition, Article 48 of the CRR indicates that the netting of deferred tax liabilities and DTAs that do not arise from temporary differences has to be done before the calculation of the 10% threshold as it feeds into it. Article 48 of the CRR refers to "deferred tax assets that are dependent on future profitability and arise from temporary differences, and in aggregate are equal to or less than 10 % of the Common Equity Tier 1 items of the institution calculated after applying the following: 1. (i) Articles 32 to 35; 2. (ii) Points (a) to (h), points (k)(ii) to (v) and point (l) of Article 36(1), excluding deferred tax assets that rely on future profitability and arise from temporary differences." The rest of the DTAs relying on future profitability - which are mentioned under Article 36 (1)(c) of the CRR - are therefore deducted for the purpose of this calculation. Those DTAs should therefore already be net of the related DTLs. Based on the above, the procedure for allocating DTLs to DTAs which rely on future profitability is the same as the one laid down in the Basel text. As a first step, DTLs are allocated to DTAs on a pro-rata basis. As a second step, the thresholds mentioned in Article 48 of the CRR are applied to DTAs arising from temporary differences.
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