EUROPEAN CENTRAL BANK

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OPINION OF THE EUROPEAN CENTRAL BANK

of 8 November 2017

on amendments to the Union framework for capital requirements of credit institutions and investment firms

(CON/2017/46)

Introduction and legal basis

On 2 and 20 February 2017 the European Central Bank (ECB) received requests from the Council of the European Union and the European Parliament, respectively, for an opinion on a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements and amending Regulation (EU) No 648/2012[1] (hereinafter the 'proposed amendments to the CRR').

On 17 and 20 February 2017 the ECB received requests from the European Parliament and the Council of the European Union, respectively, for an opinion on a proposal for a Directive of the European Parliament and of the Council amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures[2] (hereinafter the 'proposed amendments to the CRD').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union since the proposed amendments to the CRR and the CRD contain provisions affecting the ECB's tasks concerning policies relating to the prudential supervision of credit institutions in accordance with Article 127(6) of the Treaty and the European System of Central Banks' contribution to the smooth conduct of policies pursued by the competent authorities relating to the stability of the financial system, as referred to in Article 127(5) of the Treaty. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

General observations

The ECB supports the Commission's banking reform package, which will implement important elements of the global regulatory reform agenda in Union legislation. The Commission's proposal is expected to substantially strengthen the regulatory architecture, thereby contributing to the reduction of risks in the banking sector. Such progress on risk reduction will pave the way for concurrent and commensurate progress on risk sharing.

1 COM(2016) 850 final.

2 COM(2016) 854 final.

This opinion addresses issues of particular importance to the ECB, which have been divided into two sections: (1) changes to the existing Union regulatory and supervisory framework; and (2) implementation of internationally agreed supervisory standards.

1. Changes to the existing Union regulatory and supervisory framework

1.1 *Pillar 2 refinements*

1.1.1 The proposed amendments to the implementation of the Pillar 2 requirements of the Basel III framework[3] in the Capital Requirements Directive[4] (CRD) seek to achieve greater supervisory convergence in the Union by more clearly defining the elements of the capital stack and introducing Pillar 2 guidance on additional own funds, as well as by significantly tightening the conditions under which competent authorities may exercise their supervisory powers in this context.

1.1.2 While in general the ECB supports supervisory convergence, the proposal to develop regulatory technical standards on additional own funds requirements is not the appropriate tool for achieving this objective.

First, Pillar 2 requirements are institution-specific, which requires competent authorities to use supervisory judgement. Solely relying on the regulatory technical standards of the European Banking Authority (EBA) or using them for parts of the risk elements would not result in an institution-specific, risk-based approach that takes into account the diversity of institutions' risk profiles, and would in fact prevent the competent authorities from keeping pace with risks and industry developments.

Second, the EBA Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP)[5] already provide a common basis for consistent implementation of the SREP in the Union, which enables an adequate degree of supervisory judgement and may be supplemented by using EBA peer reviews. Over recent years, convergence has improved considerably with the implementation of these Guidelines[6] and the implementation of the ECB's SREP methodology which is consistently applied across the Single Supervisory Mechanism (SSM)[7].

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3 Available on the website of the Bank for International Settlements (BIS) at www.bis.org.

4 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 (OJ L 176, 27.6.2013, p. 338).

5 See Guidelines EBA/GL/2014/13 of the European Banking Authority of 19 December 2014 on common procedures and methodologies for the supervisory review and evaluation process (SREP).

6 See the EBA Report on the convergence of supervisory practices (EBA-Op-2016-11), 14 July 2016, available on the EBA's website at www.eba.europa.eu.

7 On the basis of Article 4(1)(f) of Regulation (EU) No 1024/2013, the ECB carries out supervisory reviews and for that purpose has defined a common SREP methodology, see in particular the ECB Guide to banking supervision of November 2014, available on the ECB's website at www.ecb.europa.eu. As a result, consistency in the additional requirements imposed on significant credit institutions has increased markedly. In particular, with regard to significant credit institutions within the SSM, the correlation between the overall SREP scores and capital requirements has increased from 26 % prior to 2014 to 76 % in 2016 (see page 44 of the 2016 SSM SREP methodology booklet, available on the ECB's Banking Supervision website at www.bankingsupervision.europa.eu).

Considering these positive developments, the ECB is of the view that the current framework is adequate and that the single market will continue to benefit in terms of convergence from the existing tools, possibly supplemented by making further use of EBA peer reviews.

1.1.3 Additionally, the proposed amendments to the CRD grant credit institutions, and not supervisory authorities, the power to decide, within certain limits, on the composition of the own funds held to meet Pillar 2 requirements and exclude the possibility of setting Pillar 2 requirements so that they are met in full with Common Equity Tier 1 capital. The ECB is of the view that supervisory authorities should retain the power to set a composition requirement for additional own funds and to require that additional own funds requirements must be met solely with Common Equity Tier 1 capital. From a prudential perspective, the banking crisis and more recent market events have shown that there may be significant challenges in dealing with, e.g., additional Tier 1 instruments, whose loss-absorbing capacities are not as efficient as Common Equity Tier 1 capital and whose costs would jeopardise credit institutions' profitability even further. In addition, the ECB's practice since it assumed its prudential supervisory tasks has been to set Pillar 2 requirements to be met with Common Equity Tier 1 capital. By requiring the buffers to be met using only Common Equity Tier 1 capital, the Union legislative bodies established their preference for the highest quality capital. A change in practice would result in less predictability for credit institutions and an unlevel playing field.

1.1.4 Whilst the introduction of a common basis for imposing capital guidance will assist in the consistent implementation of such guidance throughout the Union, the ECB considers that the proposed amendments to the CRD should reflect more clearly the need for flexibility in the determination of Pillar 2 guidance. In particular, the relationship between the stress test threshold and the determination of the Pillar 2 guidance should be taken into account. Since supervisory stress tests serve as a starting point for setting Pillar 2 guidance, the proposed amendments to the CRD should, in line with current international best practice, also allow competent authorities to apply a fixed threshold in stress tests across all credit institutions, which may be lower than the total SREP capital requirements (TSCR). The flexibility to use a fixed threshold should be available as a permanent option. Moreover, the use of the TSCR should be tailored to the methodology used in the stress test. For example, the use of the TSCR threshold in the adverse scenario requires the application of a dynamic balance sheet approach. In addition, a provision regarding a three-year review should be included in the proposed amendments to the CRD.

1.1.5 Furthermore, the way in which the Pillar 2 guidance interacts with the combined buffer requirements should be further clarified. In particular, potential conflicts with the policy objective of the countercyclical capital buffer should be avoided. This includes removing the reference to addressing 'cyclical economic fluctuations' as a policy objective of Pillar 2 guidance. In addition, although any overlap between Pillar 2 guidance and Pillar 2 requirements should be avoided, the proposed amendments to the CRD need to clarify that, where a stress test identifies additional types of credit risk in a hypothetical situation and these are part of the Pillar 2 requirements, competent authorities retain the ability to apply measures addressing such risks in the Pillar 2 guidance.

1.1.6 The proposed amendments to the CRD limit competent authorities' powers to require credit institutions to provide them with supplementary or more frequent information. Although the ECB fully supports the underlying objective of avoiding duplication of reporting and reducing reporting costs, the possibility to require ad hoc granular data is essential to properly assess credit institutions' risk profiles for, inter alia, the purpose of the SREP. These risks are difficult to fully capture ex ante through harmonised reporting, particularly due to the manner in which credit institutions' activities and risks develop. Moreover, competent authorities will always need to collect additional granular information in order to adequately assess credit institutions' strengths and weaknesses regarding specific risks or asset classes, e.g. in respect of non-performing loans. Therefore, the ECB is of the view that these limitations should be removed from the proposed amendments to the CRD.

1.1.7 Competent authorities should be allowed to impose own funds requirements whenever interest rate risk is a material source of concern and not only when risks exceed a certain pre-defined threshold. Furthermore the mandate proposed for the EBA to specify certain concepts for the purpose of the review of credit institutions' exposure to interest rate risk arising from non-trading book activities suggests an exhaustive list of circumstances in which supervisory measures are required as a result of potential changes in interest rates[8]. The ECB takes the view that competent authorities should be given more flexibility in imposing supervisory measures.

1.1.8 The proposed amendments to the CRD require competent authorities to consult resolution authorities prior to the adoption of any additional capital requirement[9]. While the ECB supports the objective of achieving effective coordination with resolution authorities, the proposal for formal consultation of resolution authorities prior to determining additional own fund requirements or providing guidance as specified in the CRD would prove unnecessarily burdensome and unduly formalistic in practice, without improving the substance of the current arrangements. Moreover, the existing Memorandum of Understanding between the ECB and the Single Resolution Board[10], which was implemented for the first time in the context of the development of the 2016 SREP decisions, already ensures efficient cooperation. Taking into account the non-binding nature of capital guidance, the decision to impose such guidance should remain outside the framework of joint decisions and should be subject only to an exchange of information between college members.

1.2 *Interaction of micro and macroprudential powers*

The ECB is generally supportive with regard to removing Pillar 2 as an instrument from the macroprudential toolkit, but reiterates its view that removing Pillar 2 requirements should not result in authorities having insufficient tools to carry out their mandate and achieve their policy

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8 See the proposed new Article 98(5a) of the CRD.

9 See the proposed new Article 104c of the CRD.

10 Memorandum of understanding between the Single Resolution Board and the European Central Bank of 22 December 2015 in respect of cooperation and information exchange, available on the ECB's website at www.ecb.europa.eu.

objectives[11]. Hence, the ECB's support for the proposed elimination of Pillar 2 requirements from the macroprudential toolkit is subject to the proviso that the toolkit is broadened and rendered operational. An operational and effective macroprudential framework is especially important in a monetary union where macroprudential policies are needed to address country-specific or sector-specific imbalances, thereby playing a key complementary role in addressing the heterogeneity in financial and business cycles across Member States and, in this manner, helping to maintain the integrity of the Single Market and safeguard financial stability. At the same time, the revised framework should avoid facilitating ring-fencing decisions that could increase the risk of market fragmentation and create impediments to banking system consolidation.

More generally, the ECB reiterates the importance of a thorough macroprudential review, as highlighted in the ECB contribution to the European Commission's consultation on the review of the Union's macroprudential policy framework. In the meantime, with regard to improving the operational effectiveness of the macroprudential framework, as a minimum the following adjustments to the current framework are required as a matter of priority. First, the present hierarchy for the sequencing of the activation mechanism (the so-called 'pecking order') should be withdrawn. The present pecking order provides adverse incentives regarding the selection of instruments and results in a bias towards inaction. Second, the wide variety of notification and activation procedures for macroprudential measures should be streamlined, simplified and harmonised. This would entail, inter alia, establishing a unified and simplified activation procedure for the use of the macroprudential tools provided for in Article 458 of the Capital Requirements Regulation[12] (CRR) and harmonising the activation procedures for different capital buffers in such a way as to allow the macroprudential authorities to act in an efficient, effective and timely manner. In this regard, changes to the rules relating to the other systemically important institutions buffer and the systemic risk buffer should also be considered in order to clarify the policy purpose of these buffers, thereby eliminating overlaps and enhancing the effectiveness of their use by authorities. Third, the process set out in Article 136(3) of the CRD should be streamlined in such a way that each designated authority assesses the appropriate countercyclical capital buffer rate on a quarterly basis but sets or resets the rate only if there is a change in the intensity of cyclical systemic risks. In this context, the procedures for notifying the countercyclical buffer rate should also be amended to require designated authorities of Member States participating in the SSM to also notify the information specified in points (a) to (g) of Article 136(7) of the CRD to the ECB. Finally, the ECB considers it of paramount importance that the macroprudential policy framework is revised at regular intervals, taking account of developments in the analytical framework as well as practical experience with policy implementation. In this regard, a provision for comprehensive review of the macroprudential framework within the next three years, including the scope and appropriateness of the toolkit, should also be introduced.

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11 See the ECB contribution to the European Commission's consultation on the review of the EU macroprudential policy framework (12 December 2016), available on the ECB's website at www.ecb.europa.eu.

12 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, 27.6.2013, p. 1).

1.3 *Cross-border waiver for prudential requirements*

1.3.1 The ECB generally supports the introduction of the possibility for a competent authority to waive the application of prudential requirements on an individual basis to a subsidiary whose head office is located in a Member State different to that of its parent undertaking, which is consistent with the establishment of the SSM and the banking union.

1.3.2 Additional prudential safeguards and technical modifications could address any potential financial stability concerns resulting from the application of this waiver mechanism to the banking union, which is still moving towards completion. In particular, the following two additional pre-conditions could be introduced in order for subsidiaries to benefit from the waiver: (a) the subsidiaries eligible for the waiver must not by themselves exceed a certain threshold, e.g. the thresholds for significance set out in Council Regulation (EU) No 1024/2013 (hereinafter the 'SSMR')[13]; and (b) the waiver should be subject to a floor of 75 %, e.g. the minimum own funds requirement could be reduced at most from 8 % to 6 % of the total risk exposure amount. In this regard, the guarantee would only be needed in relation to the amount of own funds requirements actually waived. Furthermore, the ECB recommends reviewing these conditions three years after their entry into force, and in particular to consider whether the floor should be lowered further in the light of the evolution of the banking union.

1.3.3 The proposed amendments to the CRR should additionally clarify that a parent undertaking's guarantee of a subsidiary must be appropriately reflected in the prudential requirements for credit risk applicable to that parent undertaking. In particular, the parent undertaking should have 100 % of the subsidiary's voting rights.

1.3.4 Finally, appropriate transitional arrangements for implementing the cross-border capital waiver should be put in place, taking into account the planned further progress on the banking union outlined in the Commission Communication to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions on completing the Banking Union[14] (hereinafter the 'Communication on completing the banking union').

1.4 *Implementation of International Financial Reporting Standard 9 (IFRS 9)*

The proposed amendments to the CRR provide for a phase-in period for expected credit loss provisions under IFRS 9[15] to mitigate the impact of IFRS 9 on credit institutions' regulatory Common Equity Tier 1 capital[16]. The ECB recommends that the period for transitional measures for IFRS 9 should start on 1 January 2018 with a linear phasing-in[17]. In this context, the presidency of

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13 Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

14 COM(2017) 592 final.

15 See International Accounting Standards Board, IFRS 9 Financial Instruments (2014), available at www.ifrs.org.

16 See the proposed new Article 473a of the CRR.

17 In line with the proposed new paragraph 96A of the Basel III document, see BCBS Standards: Regulatory treatment of accounting provisions – interim approach and transitional arrangements, March 2017, available on the website of BIS at www.bis.org. On the basis of this paragraph, the percentages for each year are determined on a straight line basis.

the Council is encouraged to fast track the legislation implementing the transitional arrangement for IFRS 9.

Moreover, it would be preferable to only apply the phase-in to the initial Common Equity Tier 1 reduction on 1 January 2018 (static approach) and not the expected loss amounts calculated under IFRS 9 at the relevant reporting date in the transition period (dynamic approach), since the latter approach would effectively delay the full application of IFRS 9[18].

To avoid double counting of amounts added back to Common Equity Tier 1 capital, the ECB recommends making corrections during the transition period to all parts of the CRR that assume that Common Equity Tier 1 capital is reduced, i.e. for the add-back to Tier 2 capital, for non-deducted deferred tax asset amounts, and for reductions in exposure values for the standardised approach to credit risk, the leverage ratio and the large exposure framework.

The transitional measures should be mandatory for all institutions; otherwise institutions opting out could compel other institutions to frontload as well, which would counteract the very purpose of allowing more time to adapt to the initial Common Equity Tier 1 reduction when moving to IFRS 9.

1.5 *Additional deductions and adjustments to Common Equity Tier 1 capital*

The ECB welcomes the Commission's clarification on the scope of Article 104(1)(d) of the CRD and Article 16(2)(d) of the SSMR as set out in the Report from the Commission to the European Parliament and the Council on the Single Supervisory Mechanism established pursuant to Regulation (EU) No 1024/2013 (hereinafter the 'Report on the SSM')[19] and, in particular, the confirmation that competent authorities are allowed to require a credit institution to apply specific adjustments (deductions, filters or similar measures) to own funds calculations where the accounting treatment applied by the credit institution is considered not to be prudent from a supervisory perspective. The ECB is of the view that such a clarification should be included directly in the text of the CRD to ensure legal certainty.

1.6 *Intermediate EU parent undertaking*

The ECB welcomes the requirement to establish intermediate EU parent undertakings for third-country banking groups with two or more institutions established in the Union, provided that certain criteria are met or thresholds are exceeded[20], since this will allow the consolidating supervisor to evaluate the risks and financial soundness of the entire banking group in the Union and to apply prudential requirements on a consolidated basis.

However, certain aspects of the proposed amendments to the CRD require further clarification in order to avoid regulatory arbitrage. First, the requirement should apply to both third-country credit institutions and branches (i.e. also in cases where the Union operations of the third-country group carried out, partially or exclusively, via branches). Second, once an intermediate EU parent undertaking is established, it should be a requirement that the existing branches of the same third-country banking group exceeding a certain threshold are re-established as branches of a credit

18 See the proposed new Article 473a of the CRR.

19 COM(2017) 591 final.

20 See the proposed new Article 21b of the CRD.

institution authorised in the Union to prevent regulatory arbitrage opportunities, since supervision of third country branches is not harmonised. It is also important, in the longer term, to harmonise the regulatory and supervisory framework of third-country branches in the Union. Third, whether the intermediate EU parent undertaking is established as a financial holding company, a mixed financial holding company or a credit institution, it should be ensured that the framework for determining supervision on a consolidated basis does not result in an outcome that is not appropriate and could compromise the exercise of efficient and effective supervision by competent authorities supervising entities belonging to the third country group on an individual basis. Consequently, where the intermediate EU parent undertaking is established as a credit institution, and in order to level the playing field, the introduction of a criterion similar to that set out in Article 111(5) of the CRD, which currently applies to financial holding companies and mixed financial holding companies, should be explored. Moreover, the scope of application and the process linked to the implementation of Article 111(5) of the CRD should be clarified. Fourth, in the event of conflict between third-country laws and the requirement for a single intermediate EU parent undertaking, which could prevent or unduly complicate compliance with the intermediate EU parent undertaking requirement, a derogation should be explored to give competent authorities, in exceptional circumstances, discretion to allow the establishment of two separate intermediate EU parent undertakings (or to allow the carving out of specific entities from the single intermediate EU parent undertaking). In this case, the threshold for the intermediate EU parent undertaking requirement should be applied at the level of the whole third-country group, before the discretion is exercised, so that the exercise of this discretion does not result in a circumvention of the applicable thresholds for establishing an intermediate EU parent undertaking, as provided for in the proposed amendments to the CRD.

1.7 *Proportionality in reporting*

As regards the reporting obligations of smaller institutions the ECB generally supports a proportionate approach. In some instances, smaller institutions should be subject to simplified reporting requirements in accordance with their size, complexity and riskiness.

The proposed reduction in the frequency of regulatory reporting[21] by small credit institutions prevents competent authorities from adequately supervising these credit institutions[22]. Regulatory reports are highly relevant, since they are among the most important sources of information for the ongoing supervision of smaller institutions. The availability of adequate information allows competent authorities to adjust the intensity of their supervisory actions with respect to such institutions. Moreover, a reduction in the frequency of reporting, although reducing compliance costs for smaller credit institutions from a human resources perspective, would be unlikely to be less burdensome from an IT perspective since smaller institutions would still need to put appropriate IT systems in place, and the majority of these costs have already been incurred.

Instead of reducing the frequency of regulatory reporting the ECB suggests that the scope of reporting for smaller institutions could be amended, once the EBA has assessed the financial

21 See the proposed new Articles 99(4), 101(5), 394(3), and 430(1) of the CRR.

22 This proposal would affect around 80 % of all less significant institutions.

impact on credit institutions of Commission Implementing Regulation (EU) No 680/2014[23] in terms of compliance costs and supervisory benefits[24].

Consistent application of the principle of proportionality should be recognised more systematically throughout the CRR. Specific cases should be identified where a more proportionate treatment could reduce compliance costs without compromising the prudential supervisory regime. A more proportionate approach could also be provided for, in particular in the areas of internal governance and the fit and proper regime, remuneration, and disclosures.

1.8 *Automatic restrictions on distributions*

As regards the proposed amendments to the CRD on the maximum distributable amount (MDA), the ECB welcomes the clarification regarding the capital stack. In addition, the ECB proposes that all interim/year-end profits not already included in Common Equity Tier 1 capital (net of distributions already paid out) should be included in the MDA and not only those profits generated after the last distribution. The focus on the most recent distribution or payment limits the profits that may be used for calculating the MDA. Credit institutions often have multiple decision dates for paying out coupons, dividends and bonuses. The more frequently a credit institution makes decisions regarding or pays distributions, the shorter the period over which profits are generated and thus the lower the amount of profits eligible to be used in the MDA calculation. This restriction is not justified if the interim/year-end profits generated, but not yet included in Common Equity Tier 1 capital, are higher than the distributions made.

1.9 *Credit and counterparty credit risk*

1.9.1 While Level 2 legislation has comprehensively clarified modelling in terms of credit, market and operational risk, such specificities are still lacking as regards counterparty credit risk. The ECB recommends that the CRR should be amended to request the EBA to develop regulatory technical standards with specific assessment criteria for the Internal Model Method (IMM) and for the advanced credit valuation adjustment (A-CVA) method. These regulatory technical standards should set out in more detail the materiality assessment for model changes and extensions for both IMM and A-CVA. Finally, a provision should be added requiring credit institutions to obtain approval from competent authorities in order to apply the A-CVA approach.

1.9.2 Credit institutions that have already implemented the IMM do not use it exclusively, and use other (non-internal) methods to calculate some of their exposures. This raises concerns that a great number of credit institutions might not be able to comply with the requirement that the IMM must not be applied in combination with other methods. To this end, the CRR should be amended to allow credit institutions to obtain permission to use the IMM for counterparty credit risk on a permanent partial basis, as they may for other risk types.

1.9.3 Furthermore, the current CRR rules for determining the maturity parameter should be extended to cover derivative and securities financing transaction exposures and open-term transactions.

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23 Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, p. 1).

24 See the proposed new Article 99(7) of the CRR.

1.9.4 The definition of the supervisory delta proposed by the Commission for the new standardised approach to measuring counterparty credit risk exposures should be aligned with the mathematically correct BCBS standards.

1.10 *Treatment of financial holding companies and mixed financial holding companies*

1.10.1 The ECB supports the harmonisation and enhancement of supervision over financial holding companies and mixed financial holding companies. It is important that actions for consolidated supervision can be directly targeted towards a banking group's parent undertaking, regardless of whether it is an institution or a holding company. In this respect, the fundamental supervisory objective is to ensure that the parent undertaking carries out its steering and coordination over its subsidiaries in a way that effectively advances the consolidated supervision. In general, the new regime should allow for the particular characteristics of a financial holding company or a mixed financial holding company and its role within a group to be sufficiently taken into account, in order to avoid excessive impediments to the group's functioning.

1.10.2 Some aspects of the proposed amendments to the CRD and the CRR would benefit from improvement or clarification. For example, clarification is needed on how the proposed amendments regarding the authorisation of financial holding companies and mixed financial holding companies relate to the existing rules on the supervision of qualifying holdings. Additionally, the proposed amendments to the CRD and the CRR do not indicate with sufficient clarity which of the current provisions referring to a 'credit institution' should be understood as including a financial holding company and a mixed financial holding company for the purposes of consolidated supervision. Further specification is also needed in relation to the ongoing supervisory measures that the consolidating supervisor may apply to a financial holding company and a mixed financial holding company.

1.10.3 In addition, the effect of the proposed amendments on Article 111 of the CRD needs to be considered. It is of particular concern that the consolidating supervisor might be located in a different jurisdiction from the financial holding company or the mixed financial holding company. The consolidating supervisor would then need to ensure compliance with consolidated requirements by a financial holding company or a mixed financial holding company established in a different Member State. The proposed amendments to the CRD should include provisions that set out, in greater detail, how to carry out efficient cross-border cooperation in such a case.

1.10.4 Finally, the proposed amendments to the CRD should include provisions that clarify the treatment of existing financial holding companies and mixed financial holding companies falling under these provisions.

1.11 *Supervision of large cross-border investment firms*

Large and complex bank-like investment firms providing investment services impacting their balance sheet, particularly those with cross-border operations, can pose increased financial stability risks as well as an increased risk of spill-over effects on other banks. The ECB takes the view that the consolidated and solo supervision of large cross-border, bank-like investment firms in the Union warrants further consideration, to ensure prudent and consistent supervisory standards commensurate with the risks these firms can pose. One of the possible options would be to amend

the CRD/CRR in order to ensure that large cross-border investment firms are considered as credit institutions[25]. This would be relevant for those investment firms which frequently carry out bank-like activities that are also carried out by banks. For those investment firms that are not in that category, the current differentiation of treatment reflected in national arrangements should be preserved.

1.12 *National powers*

1.12.1 The SSMR confers on the ECB specific tasks relating to the prudential supervision of credit institutions, with a view to contributing to the safety and soundness of credit institutions and the stability of the financial system. These tasks are carried out with full regard for the unity and integrity of the internal market, the equal treatment of credit institutions and with a view to preventing regulatory arbitrage[26]. For this purpose, the ECB is required to apply all relevant Union law and where this law is composed of directives, the national legislation transposing those directives[27], in particular the CRD and the Bank Recovery and Resolution Directive[28] (BRRD). However, some supervisory powers are not specifically mentioned in Union law and differences in national legislation result in asymmetries in the ECB's supervisory powers across participating Member States.

1.12.2 In this regard, the ECB has already examined the scope and extent of existing supervisory powers and has developed an approach for ensuring a consistent interpretation of the ECB's powers. Despite this clarification of the ECB's competences, providing these existing supervisory powers with a common legal basis in Union law would trigger a requirement for their transposition and help clarify the interpretation of whether a specific power granted under national law is within the remit of a specific task conferred on the ECB. Furthermore, it would foster a level playing field in Union banking supervision through the harmonisation of competent authorities' supervisory powers. To achieve this, Union law should include a clear reference to additional supervisory powers in a number of areas, to avoid legal uncertainty with regard to the ECB's direct supervisory powers and to ensure a level playing field with regard to supervisory powers across the banking union. These areas mainly relate to acquisitions in third countries, mergers, asset transfers and other strategic decisions, the amendment of credit institutions' statutes and their shareholders' agreements on the exercise of voting rights, the provision of credit to related parties, the outsourcing of activities by credit institutions, supervisory powers regarding external auditors and additional powers related to the authorisation of credit institutions.

1.13 *Fit and proper assessment and key function holders*

1.13.1 Currently, the CRD does not establish requirements for the procedure to be used by competent authorities when carrying out assessments on members of the management bodies. As a

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25 See Communication on completing the banking union, p. 19 and Report on the SSM, p. 8.

26 See the first paragraph of Article 1 of the SSMR.

27 See Article 4(3) of the SSMR.

28 Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

consequence, national practices differ considerably in relation to the timing of the assessment, deadlines, and on whether the assessment takes place before or immediately after appointment. The ECB recommends amending Union law to further harmonise the processes for 'fit and proper' assessments.

1.13.2 Key function holders have an important impact on the day-to-day management of credit institutions and in their overall governance structure. The ECB recommends that Union law should be amended to include a definition of key function holders and to clarify the definition of senior management. Moreover, to harmonise national approaches, a provision should be introduced on the powers of competent authorities when assessing key function holders in significant institutions.

1.14 *Exchange of information*

The current Union framework makes few specific references to the need for cooperation between the competent authorities responsible for prudential supervision and anti-money laundering authorities[29]. There are also no explicit provisions governing cooperation between the competent authorities responsible for prudential supervision and the authorities responsible for applying rules on structural separation. The ECB proposes that the CRD's provisions on exchange of confidential information should be amended to explicitly provide for cooperation with these other authorities.

1.15 *Enforcement and sanctions regime*

The list of infringements subject to sanctions under the CRD does not include a number of important breaches, i.e. in respect of Pillar 1 capital requirements, supervisory regulations and decisions issued by a competent authority, the requirement to apply for prior permission and obligations to notify the competent authority. Member States therefore have discretion as to whether to provide the competent authorities with the power to impose administrative penalties in such cases. This approach may lead to inconsistencies between the Member States and undermine the effective enforcement of prudential requirements. To counter this, the ECB proposes to expand the list of infringements subject to sanctions.

1.16 *Options and discretions*

1.16.1 The existence of national options and discretions in prudential regulation prevents a single rulebook from being realised at Union level and adds an extra layer of complexity and costs, while allowing opportunities for regulatory arbitrage. In particular, options for Member States create obstacles to the efficient operation of the SSM, which must take into account different regulations and practices in the participating Member States. The concurrent and divergent exercise of such options results in a regulatory patchwork that can hamper the smooth functioning of ECB supervision within the participating Member States and as regards exposures related to third countries.

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29 Neither the CRD nor Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73) provide specifically for cooperation of this kind.

1.16.2 In some cases, these divergences also affect supervisory powers. Thus, those unwarranted options and discretions, which are not justified from a prudential perspective, should be harmonised directly in Level 1 legislation. Similarly, the introduction of new options and discretions should be discouraged, as is the case, for example, in the proposed amendments to the CRR in the area of equity investments in funds.

1.17 *Own funds requirements for exposures to central counterparties (CCPs)*

The ECB supports the introduction of a pre-defined exemption period into the proposed amendments to the CRR as regards own funds requirements for exposures to CCPs. This pre-defined exemption period would allow institutions to consider a third country CCP which has applied, in accordance with Article 25 of Regulation (EU) No 648/2012 of the European Parliament and of the Council[30], to be a qualifying CCP. Such an exemption period is important in order to provide institutions with legal certainty regarding the treatment of their exposures over a relevant time horizon. Nonetheless, the ECB believes that providing a maximum exemption period of five years after the date of submission of an application for recognition (where the Commission has not yet adopted an implementing act) could be considered excessive in light of the potential financial stability implications stemming from exposures to non-recognised third country CCPs. The ECB therefore suggests establishing a shorter maximum exemption period for exposures to third country CCPs that have not yet been recognised under Article 25 of Regulation (EU) No 648/2012.

2. Implementation of internationally agreed supervisory standards

The ECB welcomes the implementation of internationally agreed supervisory standards in Union law. Given the interconnectedness of the global financial system, global standards are necessary to ensure comparability and a level playing field.

2.1 *Leverage ratio*

2.1.1 The ECB supports the introduction of a leverage ratio requirement in Union law and its calibration at 3 %, which is in line with the BCBS standards and the recommendations of the EBA[31]. The ECB recommends that the detailed implementation of the leverage ratio standards in the Union duly takes into account the outcome of ongoing international discussions, notably at the BCBS, as well as any further developments at the international level.

2.1.2 The proposed amendment to the CRR eliminates the existing discretion for competent authorities to exempt from the leverage ratio exposure measure any intragroup exposures already exempted from risk weights and exposures arising from the pass-through of regulated savings[32], and instead introduces automatic exemptions for these exposures[33]. The ECB is of the view that credit institutions should be permitted to exclude these exposures from the leverage ratio only if ex ante

30 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

31 EBA Report on the leverage ratio requirements under Article 511 of the CRR (No. EBA-Op-2016-13), 3 August 2016, available on the EBA's website at www.eba.europa.eu.

32 See the proposed new Article 429a(1)(j) of the CRR.

33 See the proposed new Article 429a of the CRR.

approval is given by the competent authority, following an assessment of the underlying leverage related risks as is the case in currently applicable Union law. In respect of significant institutions in the SSM the assessment is based on the ECB Guide on options and discretions available in Union law[34].

2.1.3 If the exemption of exposures arising from officially supported export credits[35] is to be maintained it should be limited to the extent necessary, insofar as warranted by Union-wide necessity rather than national preferences, as it constitutes a deviation from the BCBS standards. The automatic exemption of exposures arising from promotional loans from the exposure measure[36] also deviates from the BCBS standards and conflicts with the rationale of the leverage ratio as a non-risk based measure. Further, this automatic exemption is not in line with the EBA recommendations and impedes an efficient comparison of leverage ratios across the market. Finally, the wording of several exemptions, which are often unclear in terms of the conditions to be satisfied, may allow institutions to interpret the exemptions in different ways, possibly resulting in the exemptions having a wider application and not being targeted towards very specific cases.

2.1.4 The ECB supports the introduction of a leverage ratio surcharge specifically for global systemically important institutions (G-SIIs), which should be based on the international standards regarding the design and the calibration of such requirements once finalised. Additional requirements for G-SIIs should reflect their systemic relevance and provide the additional loss-absorbing capacity necessary to ensure supplementary protection against their potential failure.

2.1.5 The proposed amendments to the CRR also provide for the offsetting of the initial margin in the case of derivative exposures related to client clearing, which is another element that deviates from the BCBS standards. The treatment of the initial margin for these transactions is a sensitive issue that is currently under review at an international level. Implementation in the Union should reflect the conclusions of this review once it is finalised[37].

2.1.6 The proposed amendments to the CRR retain the current approach for calculating the leverage ratio on the basis of the balance sheet at the end of the quarter[38]. The ECB recommends reviewing this provision, taking into account the ongoing international discussions regarding the reference period for calculating the leverage ratio.

2.1.7 The question of how to treat central bank reserves for the purposes of calculating the leverage ratio exposure is another sensitive issue that is currently under review at international level. The leverage ratio implementation under Union law should take into account the conclusions of this review once it is finalised.

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34 See the ECB Guide on options and discretions available in Union law (consolidated version), November 2016, available on the ECB's Banking Supervision website at www.bankingsupervision.europa.eu.

35 See the proposed new Article 429a(1)(f) of the CRR.

36 See the proposed new Article 429a(1)(e) of the CRR.

37 See the BCBS Consultative Document: Revisions to the Basel III leverage ratio framework, 25 April 2016, available on the website of BIS at www.bis.org.

38 See the proposed new Article 429(2) of the CRR read in conjunction with Article 14(2) of Implementing Regulation (EU) No 680/2014.

2.1.8 The ECB concurs with the recommendations of the EBA that CCPs should not be subject to a leverage ratio requirement even if these entities may hold a banking license in some Member States. The exemption of these CCPs from the leverage ratio is justified by the specific safeguards imposed on CCPs by Regulation (EU) No 648/2012 and by the fact that liabilities of CCPs, such as margins held in the form of deposits, are mainly accumulated for risk management purposes rather than for funding investment activities.

2.2 *Net stable funding ratio (NSFR)*

2.2.1 The proposed amendments to the CRR deviate from the BCBS standards regarding the treatment of Level 1 high quality liquid assets by applying a 0 % required stable funding (RSF) factor and not a 5 % factor[39]. The ECB proposes that a stable funding requirement should be maintained for Level 1 high quality liquid assets (excluding cash and central bank reserves, which should be subject to a 0 % RSF factor), since those assets are subject to some price risk over a time horizon of one year, even in the absence of a stress scenario. Introducing the same treatment as in the liquidity coverage ratio is not appropriate, considering the different timeframes of the two standards.

2.2.2 The proposed amendments to the CRR also deviate from the BCBS standards with regard to the treatment of future funding risk in derivative contracts[40]. The ECB welcomes the mandate given to the EBA to report to the Commission on the opportunity to adopt a more risk-sensitive measure[41], given that the BCBS standards are not sufficiently risk sensitive[42]. However, the proposed transitional arrangements contain certain conceptual shortcomings that introduce regulatory arbitrage opportunities, and their impact on credit institutions has not yet been assessed. Therefore, until a more appropriate methodology has been identified, the ECB proposes that the transitional regime should be aligned with the BCBS standards.

2.2.3 As regards the treatment of secured lending transactions, the proposed amendments to the CRR apply a lower RSF factor to secured and unsecured transactions with financial counterparties with a remaining maturity of less than six months than provided for under the BCBS standards[43]. A holistic review of factors applied to all secured transactions included in the NSFR should be carried out, based on in-depth analysis, to determine whether the factors for specific collateral and maturities are calibrated properly. Until such a review is undertaken, the ECB proposes that the RSF factors provided for under the BCBS standards should be applied.

2.2.4 The proposed amendments to the CRR include an exemption from the NSFR requirement for assets and liabilities directly linked to general covered bonds complying with Directive 2009/65/EC

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39 See the proposed new Article 428r(1)(a) of the CRR, and paragraph 37 of the BCBS document Basel III: the net stable funding ratio, October 2014 (hereinafter the ‘BCBS NSFR framework’), available on the website of BIS at www.bis.org.

40 See the proposed new Article 428u(2) and Article 428x(2), (3) and (4) of the CRR.

41 See the proposed new Article 510(4) and (5) of the CRR.

42 See Eurosystem contribution to the European Commission’s DG FISMA consultation paper on further considerations for the implementation of the net stable funding ratio in the European Union, 14 September 2016.

43 See the proposed new Article 428s(b) and Article 428u(1)(a) and (b) of the CRR, and paragraphs 38 and 39(b) of the BCBS NSFR framework.

of the European Parliament and the Council[44] and for soft bullet and conditional pass-through bonds meeting certain maturity trigger criteria[45]. The ECB supports the EBA's recommendation that only fully matched funding pass-through covered bond structures should be exempted, given that they pose no funding risk to the issuing bank[46]. In contrast, the ECB proposes that other covered bonds should not be exempted from the NSFR since these bonds, similarly to other longer-term liabilities, have significant funding risks not mitigated by their structural features. Considering the importance of covered bonds in bank funding, a de facto exemption of most outstanding covered bonds results in a significant dilution of prudential standards.

2.3 *Fundamental review of the trading book*

2.3.1 The ECB welcomes the proposal for the implementation in Union law of the new BCBS standard on market risk resulting from the fundamental review of the trading book (FRTB)[47]. The ECB recommends that the detailed implementation of the FRTB standard in the Union, in particular the appropriate transitional arrangements, duly takes into account the outcome of ongoing international discussions, notably at the BCBS, as well as any further developments at the international level. In addition the currently envisaged two-year implementation period may not be sufficient for institutions to demonstrate their compliance with the model requirements and for supervisors to properly assess and approve market risk models. This is due to the fact that the technical specification of a number of important aspects of the internal models approach will be provided in regulatory technical standards, which will only be available well after the entry into force of the proposed amendments to the CRR. For this reason, it would be advisable to lengthen the implementation phase.

2.3.2 The proposed transitional regime which introduces a significant downwards recalibration (by 35 %) of the FRTB capital requirements over a period of three years, is a cause for concern because it could result in market risk capital requirements significantly below current levels for specific institutions. While a transitional period may help to mitigate the impact on credit institutions' capital requirements, the ECB proposes that the transitional calibration should be phased out gradually, according to a pre-defined schedule, and combined with a floor to prevent market risk capital requirements falling below current levels.

With regard to the additional changes to the market risk framework with a view to achieving greater proportionality, the ECB considers the proposed amendments to the CRR that allow institutions with small trading books to use simplified approaches to be an adequate addition, as long as the thresholds for application are kept at the levels set in the proposal. However, the proposed simplified standardised approach should be sufficiently risk-sensitive and lead to capital requirements that are adequate when compared to the new approaches applicable to larger credit

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44 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

45 See the proposed new Article 428f(2)(c) and (d) of the CRR.

46 See Recommendation 6 of the EBA Report on Net Stable Funding Requirements under Article 510 of the CRR (EBA Op/2015/22) of 15 December 2015, available on the EBA's website at www.eba.europa.eu.

47 BCBS Standards: Minimum capital requirements for market risk, January 2016, available on the website of BIS at www.bis.org.

institutions. To this end, future revisions of the CRR should take account of relevant developments at BCBS level.

2.3.3 The proposed amendments to the CRR do not incorporate some key elements of the BCBS standards, such as the specification of the profit and loss attribution test, directly in the Level 1 legislation, leaving them to future delegated legislation. The ECB proposes that these elements should be included directly in the CRR, with only technical specifications being implemented in technical standards.

2.3.4 The proposed amendments to the CRR grant a significant amount of modelling freedom to credit institutions, which could lead to serious divergences in supervisory practices and risk modelling. To counter this, the ECB proposes that restrictions to modelling developed as part of the FRTB on the basis of comparative studies should be incorporated in the CRR.

2.3.5 Unlike the BCBS standards, the proposed amendments to the CRR allow credit institutions to choose, without any restrictions, the trading desks for which they apply for internal model approval and those for which they will maintain the standardised approach. In order to prevent regulatory arbitrage, competent authorities should be able, based on the approach chosen by the credit institutions for comparable trading desks, to determine the inclusion of trading desks that they consider should be within the scope of the internal models approach.

Specific ECB staff drafting proposals in respect of the proposed amendments to the CRR and the CRD are set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document has not been adopted by the Governing Council. The technical working document is available in English on the ECB's website.

Done at Frankfurt am Main, 8 November 2017.

[signed]

The President of the ECB

Mario DRAGHI

EUROPEAN CENTRAL BANK

EUROSYSTEM

ECB-PUBLIC

Technical working document

ECB staff drafting proposals on amendments to the Union framework for capital requirements of credit institutions and investment firms

Drafting proposals in relation to proposal for a directive of the European Parliament and of the Council amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures

and

further proposed amendments to the current text of the Capital Requirements Directive (CRD)

Text proposed by the European Commission or current text of the CRD	**Amendments proposed by the ECB**[1]
Amendment 1 Point (1)(b) of Article 1 of the proposed directive (Article 2(5) of the CRD)	
‘(1) […] (b) the following paragraphs 5a and 5b are inserted: “5a. This Directive shall not apply to an institution where the Commission establishes in a delegated act adopted pursuant to Article 148, on the basis of information available to it that the institution fulfils all of the following conditions, without prejudice to the application of state aid rules: […] 5b. This Directive shall not apply to categories of institutions in a Member State, where the Commission establishes in a delegated act adopted pursuant to Article 148, on the basis of information available to it, that the institutions	‘(1) […] (b) the following paragraphs ~~5a and 5b~~ are inserted: “~~5a.~~ This Directive shall not apply to an institution where the Commission establishes in a delegated act adopted pursuant to Article 148, on the basis of information available to it that the institution fulfils all of the following conditions, without prejudice to the application of state aid rules: […] ~~5b.~~ This Directive shall not apply to categories of institutions in a Member State, where the Commission establishes in a delegated act adopted pursuant to Article 148, on the basis of information available to it, that the institutions

1 Bold in the body of the text indicates where ECB staff proposes inserting new text. Strikethrough in the body of the text indicates where ECB staff proposes deleting text.

<table>
<tr><th>Text proposed by the European Commission or current text of the CRD</th><th>Amendments proposed by the ECB[1]</th></tr>
<tr><td>falling under that category qualify as credit unions under the national law of a Member State and meet all of the following conditions:
[…]"'</td><td>falling under that category qualify as credit unions under the national law of a Member State and meet all of the following conditions:
[…]"'</td></tr>
<tr><td colspan="2"><u>Explanation</u>
Council Regulation (EU) No 1024/2013[2] provides that the institutions referred to in Article 2(5) of the CRD are excluded from the supervisory tasks conferred on the ECB in accordance with Article 4 of that Regulation. To ensure that the institutions referred to in the proposed paragraphs 5a and 5b, which are subject to national supervisory regimes, are also excluded from the supervisory tasks conferred on the ECB it is suggested that these paragraphs are merged with the existing paragraph 5 of Article 2 of the CRD.</td></tr>
<tr><td colspan="2">Amendment 2
Point (1)(c) of Article 1 of the proposed directive
(Article 2(6) of the CRD)</td></tr>
<tr><td>'(c) paragraph 6 is replaced by the following:
"6. The entities referred to in point (1) and points (3) to (24) of paragraph 5 and in the delegated acts adopted in accordance with paragraphs 5a and 5b of this Article shall be treated as financial institutions for the purposes of Article 34 and Title VII, Chapter 3."'</td><td>'(c) paragraph 6 is replaced by the following:
"6. The entities referred to in point (1) and points (3) to (24) of paragraph 5 and in the delegated acts adopted in accordance with paragraph~~s 5a and 5b~~ **5** of this Article shall be treated as financial institutions for the purposes of Article 34 and Title VII, Chapter 3.
Member States shall ensure publication of a list of the entities excluded from the application of this Directive under paragraph 5, together with information about the extent of any deposit protection."'</td></tr>
<tr><td colspan="2"><u>Explanation</u>
ECB staff supports the introduction in Article 1(b) of the proposed directive of the proposed paragraphs specifying the conditions that must be fulfilled by development banks and credit unions in order to be excluded from the scope of the CRD.
In this regard ECB staff recommends a clear identification of the development banks and credit unions</td></tr>
</table>

2 Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

<table>
<tr><th>Text proposed by the European Commission or current text of the CRD</th><th>Amendments proposed by the ECB[1]</th></tr>
<tr><td colspan="2">*that are to be excluded. A public register of the excluded entities should be established. In addition, information about the scope of protection afforded to depositors should be provided to the public. This information is necessary to provide transparency regarding the status and supervision of these entities and the protection of its depositors. In accordance the proposed amendment to Article 2(5) of the CRD, this paragraph would also cover the entities listed in the proposed new paragraphs.*</td></tr>
<tr><td colspan="2">Amendment 3
Article 3(1)(9) of the CRD</td></tr>
<tr><td>‘(9) ‘senior management’ means those natural persons who exercise executive functions within an institution and who are responsible, and accountable to the management body, for the day-to-day management of the institution;’</td><td>‘(9) ‘senior management’ means those natural persons who exercise executive functions within an institution ~~and who are responsible, and~~, **who are not members of the management body but** accountable ~~to the management body, for~~ **to it, and who are responsible for supporting the management body in** the day-to-day management of the institution**, which includes directly reporting to the management body any information that is necessary for carrying out its functions**;’</td></tr>
<tr><td colspan="2"><u>*Explanation*</u>
The definition of senior management is revised to clarify the distinction between management body and senior management, as different governance structures in Member States lead in practice to different interpretations of the notion of ‘senior management’. The text regarding the responsibility to report to the management body is added to clarify at what level of the hierarchy of the institution senior management operates (senior management reports directly to the management body).</td></tr>
<tr><td colspan="2">Amendment 4
Article 3(1)(65) of the CRD (new definition)</td></tr>
<tr><td>No text</td><td>‘**(65) 'key function holders’ means those natural persons who are not members of the management body but who exercise a significant influence over the direction of the institution, including at least the heads of the internal control functions concerning risk management, compliance and internal audit, as**</td></tr>
</table>

<table>
<tr><th>Text proposed by the European Commission or current text of the CRD</th><th>Amendments proposed by the ECB[1]</th></tr>
<tr><td></td><td>well as the Chief Executive Officer and the Chief Financial Officer, if they are not members of the management body;’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The definition of key function holders is proposed in view of the proposed amendment to Article 91 of the CRD concerning the fitness and propriety of key function holders.</td></tr>
<tr><td colspan="2">Amendment 5
Article 3(1)(66) of the CRD (new definition)</td></tr>
<tr><td>No text</td><td>‘(66) ‘merger’ means merger as defined in point 35a of Article 4(1) of Regulation (EU) No 575/2013.’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The definition of merger is proposed in view of the proposed requirements concerning the assessment of mergers (see the proposed new Article 27a of the CRD).</td></tr>
<tr><td colspan="2">Amendment 6
Article 8(1) of the CRD</td></tr>
<tr><td>‘1. Member States shall require credit institutions to obtain authorisation before commencing their activities. Without prejudice to Articles 10 to 14, they shall lay down the requirements for such authorisation and notify EBA.’</td><td>‘1. Member States shall require credit institutions to obtain authorisation from competent authorities before commencing their activities including those listed in Annex I.
Without prejudice to Articles 10 to 14, Member States <s>they</s> shall lay down the requirements for such authorisation and notify EBA.’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The CRD and Regulation (EU) No 1024/2013 do not explicitly provide that banks have to obtain prior authorisation for activities 3-15 on the list in Annex I. Some Member States have implemented universal bank licences comprising all activities on that list. It is important to clearly establish that credit institutions cannot perform any of the activities listed in Annex I without prior authorisation from the competent authority. Such harmonisation should help the framework for banking authorisation to be evenly and consistently applied within the Union. Such a harmonised framework for the authorisation of a broad range of activities conducted by banks would contribute to a level playing field across the Union.</td></tr>
</table>

Text proposed by the European Commission or current text of the CRD	**Amendments proposed by the ECB**[1]
Amendment 7 Point (9) of Article 1 of the proposed directive (Article 21b of the CRD)	
‘1. Member States shall require that two or more institutions in the Union, which are part of the same third country group, have an intermediate EU parent undertaking that is established in the Union. 2. Member States shall require an intermediate EU parent undertaking in the Union to obtain authorisation as an institution in accordance with Article 8, or as a financial holding company or mixed financial holding company in accordance with Article 21a. […]’	‘1. Member States shall require that two or more institutions **or third country branches** in the Union, which are part of the same third country group, have an intermediate EU parent undertaking that is established in the Union. 2. Member States shall require an intermediate EU parent undertaking in the Union to obtain authorisation as a~~n~~ **credit** institution in accordance with Article 8, or as a financial holding company or mixed financial holding company in accordance with Article 21a. […] **4a. Where paragraphs 1 or 2 apply, Member States shall require that each third country branch of the third country group is re-established either as a credit institution or as a branch of a credit institution established in the Union**. […]’
<u>*Explanation*</u> *The requirement to establish intermediate EU parent undertakings for third country banking groups with two or more institutions in the Union is welcomed as it would allow the consolidating supervisor to evaluate the risks and the financial soundness of the entire banking group in the Union and to apply prudential requirements on a consolidated basis.* *However, certain aspects of the proposal should be further clarified. In particular, the requirement should apply to both third country credit institutions and branches (i.e. the requirement should apply even if the third country group consists only of third country branches). Second, it should be clarified that once an intermediate EU parent undertaking is established, the existing branches of the same third country banking group must be reorganised as branches of a credit institution authorised in the Union, as long as they exceed a certain threshold. This is to prevent regulatory arbitrage opportunities, since supervision of third-country branches is not harmonised. It is also important, in the longer term, to harmonise the*	

Text proposed by the European Commission or current text of the CRD	**Amendments proposed by the ECB**[1]
regulatory and supervisory framework of third-country branches in the Union. Third, the consolidating supervisor should be identified regardless of the legal form that the intermediate parent undertaking takes, namely that of a financial holding company or of a credit institution, and it should be taken into account whether this determination leads to an inappropriate or inefficient outcome from a supervisory perspective. *Finally, the relevant competent authority should be afforded the power to permit the setting up of more than one IPU (or to carve out certain entities from the IPU) in specific and exceptional situations, e.g. where the exclusion of certain activities from the IPU would be justified by legal limitations applicable to the third-country group in the third country of origin. This exceptional derogation would cater for cases where the financial position and soundness of a credit institution could be compromised, as a consequence of the rule for a single IPU, e.g. because the credit institution would not be permitted to receive financial support from a parent undertaking in the third country of origin, due to the applicable legal limitations. The derogation should not affect the designated thresholds in the proposed Article 21b of the CRD.*	
Amendment 8 Article 22(3) of the CRD	
'3. The competent authorities may, during the assessment period if necessary, and no later than on the 50th working day of the assessment period, request further information that is necessary to complete the assessment. Such a request shall be made in writing and shall specify the additional information needed. For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be suspended. The suspension shall not exceed 20 working days. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but shall not result in a suspension of the assessment period.'	'3. The competent authorities may, during the assessment period if necessary, and no later than on the 50th working day of the assessment period, request further information that is necessary to complete the assessment. Such ~~a~~ request**s** shall be made in writing and shall specify the additional information needed. For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be suspended. The suspension shall not exceed 20 working days. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but shall not result in a suspension of the assessment period **except in duly justified cases. The proposed acquirer shall be informed thereof**.'

<table>
<tr><th>Text proposed by the European Commission or current text of the CRD</th><th>Amendments proposed by the ECB[1]</th></tr>
<tr><td colspan="2"><u>Explanation</u>
The purpose of the revision of Article 22(3) is to allow further extensions of the qualifying holding procedure timeline in duly justified cases. Currently the procedure can be extended only once for 20 or 30 working days, thus allowing procedures to run for around 80 or 90 working days. While in the majority of cases the current deadlines are manageable it appears that, in certain cases, especially for 'specific acquirers' such as private equity funds and complex conglomerates, new issues arise continuously during talks with the applicant. In such cases, the NCA and the ECB should have the right to make further requests for information in duly justified cases, for instance when the applicant discloses information bit by bit or in the case of material changes to the application. The term 'duly justified cases' is taken from Article 14 of Regulation (EU) No 1024/2013, which also addresses timing issues.
This new wording is in line with the overall aim of the qualifying holding legislation as described in recital 5 whereby 'in accordance with good administrative practice, the competent authorities should complete their assessment without delay and inform the proposed acquirer of a positive assessment, if requested to do so by the proposed acquirer'.
This revision will not necessitate a revision of the other sectorial insurance directives, since Directive 2007/44/EC of the European Parliament and of the Council[3] addresses them through separate provisions.
This revision is in line with the Bank for International Settlements (BIS) core principles on banking supervision which do not limit the timeline of the procedure (core principle 6).</td></tr>
<tr><td colspan="2">Amendment 9
Article 27a of the CRD (new)</td></tr>
<tr><td>No text</td><td>'Article 27a
Mergers involving credit institutions
Member States shall require any legal person intending to enter into a merger or a demerger with a credit institution to notify the competent authority of the Member State where that credit institution is established.
Once notified, the competent authority shall follow the procedure and have the powers set out in Article 22.'</td></tr>
</table>

3 Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (OJ L 247, 21.9.2007, p. 1).

<table>
<tr><th>Text proposed by the European Commission or current text of the CRD</th><th>Amendments proposed by the ECB[1]</th></tr>
<tr><td colspan="2"><u>Explanation</u>
On the basis of the current text of the CRD, mergers and demergers may be subject to a qualifying holding procedure only if a natural or legal person acquires shares or voting rights reaching or exceeding a threshold laid down in Article 22(1) as a result of the merger or demerger. If no relevant threshold is passed, mergers or demerger may only be subject to a supervisory assessment if national law provides for a specific supervisory authorisation. Although a number of Member States have introduced powers for competent authorities to approve or reject (material) mergers, this is not the case in all Member States. The inclusion of the proposed Article would allow the ECB to assess mergers and allow for a level playing field relating to mergers across the Union.
In this respect, it should be clarified whether the same assessment criteria as for qualifying holdings should be used for mergers or whether other criteria should be used.</td></tr>
<tr><td colspan="2">Amendment 10
Article 27b of the CRD (new)</td></tr>
<tr><td>No text</td><td>‘Article 27b
Material acquisitions and investments
‘Member States shall require any credit institution that has taken a decision to undertake, directly or indirectly, a material acquisition or investment within or outside of the Union (proposed transaction) to notify the competent authority in writing in advance of the proposed transaction.
The competent authority shall have the power to approve or reject the proposed transaction.’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
This introduces an approval requirement for acquisitions in line with BIS core principle 7.</td></tr>
<tr><td colspan="2">Amendment 11
Article 27c of the CRD (new)</td></tr>
<tr><td>No text</td><td>‘Article 27c
Shareholders’ voting rights
1. Member States shall require that a</td></tr>
</table>

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
	shareholders' agreement that: **(a) relates to the exercise of the voting rights in a credit institution (relevant credit institution); and** **(b) regulates the exercise of the voting rights of the participants to the agreement** **is promptly notified by the participants to the agreement to the authority competent for the supervision of the relevant credit institution.** **2. Competent authorities shall assess whether shareholders' agreements affect the sound and prudent management of credit institutions. For these purposes, Member States shall ensure that the competent authorities have the power to request any further information that is necessary to complete the assessment from the credit institution and all participants to the agreement.** **3. Competent authorities shall have the power to suspend the voting rights of the participants to a shareholders agreement within 120 days after the receipt of the notification of the agreement. Competent authorities may suspend the voting rights if, on the completion of the assessment, they consider that the agreement affects the sound and prudent management of the credit institution.** **4. Without prejudice to the above, the competent authorities may at any time suspend the voting rights of the participants to a shareholders agreement if:** **(a) new information, which was not available at the time of the assessment pursuant to paragraph 2, becomes available to them; and** **(b) they consider, having taken into account this new information, that the agreement affects**

<table>
<tr><th>Text proposed by the European Commission or current text of the CRD</th><th>Amendments proposed by the ECB[1]</th></tr>
<tr><td></td><td>the sound and prudent management of the credit institution.'</td></tr>
<tr><td colspan="2"><u>Explanation</u>
This amendment will allow competent authorities to review shareholders' agreements that relate to the exercise of voting rights and to take action where an agreement affects the sound and prudent management of credit institutions.</td></tr>
<tr><td colspan="2">Amendment 12
Article 51(1)(d) of the CRD (new)</td></tr>
<tr><td>'1. The competent authorities of a host Member State may make a request to the consolidating supervisor, where Article 112(1) applies, or to the competent authorities of the home Member State for a branch of an institution other than an investment firm subject to Article 95 of Regulation (EU) No 575/2013 to be considered as significant.
That request shall provide reasons for considering the branch to be significant with particular regard to the following:
[…]'</td><td>'1. The competent authorities of a host Member State may make a request to the consolidating supervisor, where Article 112(1) applies, or to the competent authorities of the home Member State for a branch of an institution other than an investment firm subject to Article 95 of Regulation (EU) No 575/2013 to be considered as significant.
That request shall provide reasons for considering the branch to be significant with particular regard to the following:
[…]
(d) whether the total assets of the branch are above EUR 30 billion.
The request shall also provide reasons for considering the branch to be systemically significant with particular regard to the following:
(i) whether the total assets of the branch are above EUR 100 billion, or whether the market share of the branch in terms of deposits exceeds 10 % in the host Member State;
(ii) the likely impact of a suspension of critical functions in the host Member State;
(iii) the size and importance of the branch in the context of the banking or financial system of the host Member State;</td></tr>
</table>

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
	(iv) other factors which may seriously influence systemic risk and financial stability in the host Member State.’
Explanation	
The suggested amendment is intended to cover the circumstances that might warrant being taken into consideration when identifying significant branches, and to align the definition with that in Regulation (EU) No 1024/2013.	
Amendment 13 Article 51(3a) of the CRD (new)	
No text	‘**3a. The intensity of cooperation between the home and host authorities of a systemically significant branch shall follow a risk-based approach.**’
Explanation	
The purpose of the amendment is to distinguish supervisory approaches, acknowledging the fact that more intensive cooperation among competent authorities in the case of systemically significant branches might be needed.	
Amendment 14 Article 51(4) of the CRD (new)	
‘4. EBA shall develop draft regulatory technical standards in order to specify general conditions for the functioning of colleges of supervisors.’	‘4. EBA shall develop draft regulatory technical standards in order to specify general conditions relating to the functioning of colleges of supervisors **and the intensity of cooperation referred to in paragraph 3a**.’
Explanation	
Commission Delegated Regulation (EU) 2016/98[4] governs the cooperation between home and host Member State competent authorities. The European Banking Authority (EBA) should be additionally empowered to specify the intensity of such cooperation.	

4 Commission Delegated Regulation (EU) 2016/98 of 16 October 2015 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for specifying the general conditions for the functioning of colleges of supervisors (OJ L 21, 28.1.2016, p. 2).

<table>
<tr><th>Text proposed by the European Commission or current text of the CRD</th><th>Amendments proposed by the ECB[1]</th></tr>
<tr><td colspan="2">Amendment 15
Article 56(g) and (h) of the CRD (new)</td></tr>
<tr><td>No text</td><td>‘(g) competent authorities referred to in Article 48 of Directive (EU) 2015/849 of the European Parliament and of the Council *;
(h) competent authorities or bodies responsible for the application of rules on structural separation within a banking group.
(*) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The new points would enable cooperation and information exchange with anti-money laundering and counter terrorist financing authorities as well as authorities in charge of structural separation rules.</td></tr>
<tr><td colspan="2">Amendment 16
Article 63(1) of the CRD</td></tr>
<tr><td>‘1. […]
Member States shall provide at least that a person referred to in the first subparagraph shall also have a duty to report any fact or decision of which that person becomes aware in the course of carrying out a task as described in the first subparagraph in an undertaking having close links resulting from a control relationship with the institution within which he is carrying out that task.’</td><td>‘1. […]
Member States shall provide at least that a person referred to in the first subparagraph shall also have a duty to report any fact or decision of which that person becomes aware in the course of carrying out a task as described in the first subparagraph in an undertaking having close links resulting from a control relationship with the institution within which he is carrying out that task.
Member States shall provide that the competent authorities may, as a minimum, require the</td></tr>
</table>

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
	replacement of a person referred to in the first subparagraph if that person acts in breach of their obligations under the first subparagraph.’

<u>*Explanation*</u>

The amendment aims to allow competent authorities to require the replacement of an auditor of a credit institution where that auditor is in breach of their duties under paragraph 1.

Amendment 17

Article 65 of the CRD

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
‘Article 65 *Administrative penalties and other administrative measures* 1. Without prejudice to the supervisory powers of competent authorities referred to in Article 64 and the right of Member States to provide for and impose criminal penalties, Member States shall lay down rules on administrative penalties and other administrative measures in respect of breaches of national provisions transposing this Directive and of Regulation (EU) No 575/2013 and shall take all measures necessary to ensure that they are implemented. Where Member States decide not to lay down rules for administrative penalties for breaches which are subject to national criminal law they shall communicate to the Commission the relevant criminal law provisions. The administrative penalties and other administrative measures shall be effective, proportionate and dissuasive. 2. Member States shall ensure that where the obligations referred to in paragraph 1 apply to institutions, financial holding companies and mixed financial holding companies in the event of a breach of national provisions transposing this Directive or of Regulation (EU) No 575/2013, penalties may be applied, subject to the conditions	*‘Article 65* ***Enforcement measures, a**~~a~~Administrative penalties and other administrative measures* 1. Without prejudice to the supervisory powers of competent authorities referred to in Article 64, ~~and the right of Member States to provide for and impose criminal penalties~~ Member States shall lay down rules on**:** **(a) enforcement measures, aimed at compelling entities to restore compliance with prudential requirements in the case of an ongoing infringement;** **(b)** administrative penalties**, aimed at punishing misconduct;** and **(c)** other administrative measures in respect of breaches of national provisions transposing this Directive and of Regulation (EU) No 575/2013 and shall take all measures necessary to ensure that they are implemented. **The enforcement measures, administrative penalties and other administrative measures shall be effective, proportionate and dissuasive.** **The abovementioned rules on administrative penalties shall be understood without prejudice to the right of Member States to provide for and**

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
laid down in national law, to the members of the management body and to other natural persons who under national law are responsible for the breach. [...]'	**impose criminal penalties.** Where Member States decide not to lay down rules for administrative penalties for breaches which are subject to national criminal law they shall communicate to the Commission the relevant criminal law provisions, **however these provisions shall not prevent Member States from applying enforcement measures.** ~~The administrative penalties and other administrative measures shall be effective, proportionate and dissuasive~~ 2. Member States shall ensure that where the obligations referred to in paragraph 1 apply to institutions, financial holding companies and mixed financial holding companies in the event of a breach of national provisions transposing this Directive or of Regulation (EU) No 575/2013, **enforcement measures, administrative** penalties **and other administrative measures** may be applied, subject to the conditions laid down in national law, to the members of the management body and to other natural persons who under national law are responsible for the breach. [...]'
Explanation *The concept of enforcement measures is introduced. As opposed to administrative penalties (which have a punitive purpose) enforcement measures aim at compelling entities to restore compliance with prudential requirements which they are breaching. Given their specific (non-punitive) purpose, enforcement measures may be imposed concurrently with criminal penalties, where applicable.*	
Amendment 18 Article 66 of the CRD	
'Article 66 *Administrative penalties and other administrative measures for breaches of authorisation requirements and requirements for acquisitions of*	*'Article 66* ***Enforcement measures, a***~~*a*~~*Administrative penalties and other administrative measures for breaches of authorisation requirements and requirements for*

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
qualifying holdings 1. Member States shall ensure that their laws, regulations and administrative provisions provide for administrative penalties and other administrative measures at least in respect of: […] 2. Member States shall ensure that in the cases referred to in paragraph 1, the administrative penalties and other administrative measures that can be applied include at least the following: (a) a public statement which identifies the natural person, institution, financial holding company or mixed financial holding company responsible and the nature of the breach; (b) an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct; (c) in the case of a legal person, administrative pecuniary penalties of up to 10 % of the total annual net turnover including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable in accordance with Article 316 of Regulation (EU) No 575/2013 of the undertaking in the preceding business year; (d) in the case of a natural person, administrative pecuniary penalties of up to EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 July 2013; (e) administrative pecuniary penalties of up to twice the amount of the benefit derived from the breach where that benefit can be determined; (f) suspension of the voting rights of the shareholder or shareholders held responsible for	*acquisitions of qualifying holdings* 1. Member States shall ensure that their laws, regulations and administrative provisions provide for **enforcement measures,** administrative penalties and other administrative measures at least in respect of: […] 2. Member States shall ensure that in the cases referred to in paragraph 1, the **enforcement measures,** administrative penalties and other administrative measures that can be applied include at least ~~the following~~: ~~(a) a public statement which identifies the natural person, institution, financial holding company or mixed financial holding company responsible and the nature of the breach;~~ ~~(b) an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;~~ **(a) the following enforcement measures:** **(i) in the case of a legal person, periodic enforcement payments of up to 5 % of the average daily turnover which, in the case of an ongoing infringement, the legal person is obliged to pay per day of infringement and which may be imposed in respect of a period of at least six months from the date stipulated in the decision imposing the periodic enforcement payment;** **(ii) in the case of a natural person, periodic enforcement payments of up to EUR 500 000 which, in the case of an ongoing infringement, the natural person is obliged to pay per day of infringement and which may be imposed in respect of a period of at least six months from the date stipulated in the decision imposing the**

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
the breaches referred to in paragraph 1. Where the undertaking referred to in point (c) of the first subparagraph is a subsidiary of a parent undertaking, the relevant gross income shall be the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.'	**periodic enforcement payment;** **(iii) suspension of the voting rights of the shareholder or shareholders responsible for the breaches referred to in paragraph 1;** **(b) the following administrative penalties:** ~~(c)~~ **(i)** in the case of a legal person, administrative pecuniary penalties of up to 10 % of the total annual net turnover ~~including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable in accordance with Article 316 of Regulation (EU) No 575/2013~~ of the undertaking ~~in the preceding business year~~; ~~(d)~~ **(ii)** in the case of a natural person, administrative pecuniary penalties of up to EUR 5 000 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 July 2013; ~~(e)~~ **(iii)** administrative pecuniary penalties of up to twice the amount of the benefit derived from the breach where that benefit can be determined; **and** **(c) the following other administrative measures:** **(i) a public statement which identifies the natural person, institution, financial holding company or mixed financial holding company responsible and the nature of the breach;** **(ii) an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct.** ~~(f) suspension of the voting rights of the shareholder or shareholders held responsible for the breaches referred to in paragraph 1.~~ ~~Where the undertaking referred to in point (c) of the first subparagraph is a subsidiary of a parent~~

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
	~~undertaking, the relevant gross income shall be the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.~~ **3. The total annual net turnover referred to in paragraph 2(b)(i) shall be equal to the relevant indicator as set out in Article 316 of Regulation (EU) No 575/2013. For the purpose of this Article the relevant indicator shall be calculated on the basis of the most recent available yearly supervisory financial information, unless the result is zero or negative. In the latter case the basis for the calculation shall be the most recent earlier yearly supervisory financial information which produces an indicator above zero. Where the undertaking concerned is part of a group the relevant total annual net turnover shall be the total annual net turnover resulting from the consolidated account of the ultimate parent undertaking.** **The average daily turnover referred to in paragraph (2)(a)(i) shall be the total annual net turnover divided by 365.'**

Explanation

The proposed amendment supplements a list of measures qualifying as enforcement measures. Furthermore, the existing list of measures is categorised and reordered accordingly. In addition, the current definition of annual net turnover is revised. The wording 'shall be equal to' clarifies that Member States have no discretion to include additional items or leave out items mentioned in Article 316 of Regulation (EU) No 575/2013 of the European Parliament and of the Council[5].

Since the relevant indicator can be negative and a negative figure cannot be the basis for the calculation of a penalty, paragraph 3 clarifies that in such a case the indicator will be calculated on the basis of the most recent earlier yearly supervisory financial information which produces an indicator above zero.

5 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 Text with EEA relevance (OJ L 176, 27.6.2013, p. 1).

Text proposed by the European Commission or current text of the CRD	**Amendments proposed by the ECB**[1]
Amendment 19 Article 67 of the CRD	
‘1. This Article shall apply at least in any of the following circumstances: […] (f) an institution fails to report or provides incomplete or inaccurate information to the competent authorities in relation to the data referred to in Article 101 of Regulation (EU) No 575/2013; [...] 2. Member States shall ensure that in the cases referred to in paragraph 1, the administrative penalties and other administrative measures that can be applied include at least the following: (a) a public statement which identifies the natural person, institution, financial holding company or mixed financial holding company responsible and the nature of the breach; (b) an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct; (c) in the case of an institution, withdrawal of the authorisation of the institution in accordance with Article 18; (d) subject to Article 65(2), a temporary ban against a member of the institution's management body or any other natural person, who is held responsible, from exercising functions in institutions; (e) in the case of a legal person, administrative pecuniary penalties of up to 10 % of the total annual net turnover including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees	‘1. This Article shall apply at least in any of the following circumstances: […] (f) an institution fails to report or provides incomplete or inaccurate information to the competent authorities in relation to the data referred to in **Article 100 or** Article 101 of Regulation (EU) No 575/2013; **[…]** **(q) an institution fails to meet the own funds requirements set out in Article 92 of Regulation (EU) No 575/2013;** **(r) an institution or a natural person fails to comply with an obligation arising from a regulation or decision issued by the competent authority;** **(s) an institution acts without the prior permission of the competent authority where Regulation (EU) No 575/2013 or national provisions transposing this Directive require the institution to obtain such prior permission, obtained such permission on the basis of its own false statement or does not comply with the conditions under which such permission was granted;** **(t) an institution fails to give notice or does not do so correctly, in full or in time where the institution is obliged to give such notice according to Regulation (EU) No 575/2013 or national provisions transposing this Directive.** 2. Member States shall ensure that in the cases referred to in paragraph 1, the ~~administrative penalties and other administrative~~ measures that

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
receivable in accordance with Article 316 of Regulation (EU) No 575/2013 of the undertaking in the preceding business year; (f) in the case of a natural person, administrative pecuniary penalties of up to EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 July 2013; (g) administrative pecuniary penalties of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined. Where an undertaking referred to in point (e) of the first subparagraph is a subsidiary of a parent undertaking, the relevant gross income shall be the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.'	can be applied include at least ~~the following~~: ~~(a) a public statement which identifies the natural person, institution, financial holding company or mixed financial holding company responsible and the nature of the breach;~~ ~~(b) an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;~~ ~~(c) in the case of an institution, withdrawal of the authorisation of the institution in accordance with Article 18;~~ ~~(d) subject to Article 65(2), a temporary ban against a member of the institution's management body or any other natural person, who is held responsible, from exercising functions in institutions;~~ **(a) the following enforcement measures:** **(i) in the case of a legal person, periodic enforcement payments of up to 5 % of the average daily turnover which, in the case of an ongoing infringement, the legal person is obliged to pay per day of infringement and which may be imposed in respect of a period of at least six months from the date stipulated in the decision imposing the periodic enforcement payment;** **(ii) in the case of a natural person, periodic enforcement payments of up to EUR 500 000 which, in the case of an ongoing infringement, the natural person is obliged to pay per day of infringement and which may be imposed in respect of a period of at least six months from the date stipulated in the decision imposing the periodic enforcement payment;** **(b) the following administrative penalties:** ~~(e)~~ **(i)** in the case of a legal person, administrative pecuniary penalties of up to 10 % of the total

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
	annual net turnover ~~including the gross income consisting of interest receivable and similar income, income from shares and other variable or fixed-yield securities, and commissions or fees receivable in accordance with Article 316 of Regulation (EU) No 575/2013~~ of the undertaking ~~in the preceding business year~~; ~~(f)~~ **(ii)** in the case of a natural person, administrative pecuniary penalties of up to EUR 5 000 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 July 2013; ~~(g)~~ **(iii)** administrative pecuniary penalties of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined; **and** **(c) the following other administrative measures:** **(i) a public statement which identifies the natural person, institution, financial holding company or mixed financial holding company responsible and the nature of the breach;** **(ii) an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;** **(iii) in the case of an institution, withdrawal of the authorisation of the institution in accordance with Article 18;** **(iv) subject to Article 65(2), a temporary ban against a member of the institution's management body or any other natural person who is held responsible from exercising functions in institutions.** **3. The total annual net turnover referred to in paragraph 2(b)(i) shall be equal to the relevant indicator as set out in Article 316 of Regulation**

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
	(EU) No 575/2013. For the purpose of this Article the relevant indicator shall be calculated on the basis of the most recent available yearly supervisory financial information, unless the result is zero or negative. In the latter case the basis for the calculation shall be the most recent earlier yearly supervisory financial information which produces an indicator above zero. Where the undertaking concerned is part of a group the relevant total annual net turnover shall be the total annual net turnover resulting from the consolidated account of the ultimate parent undertaking. **The average daily turnover referred to in (2)(a)(i) shall be the total annual net turnover divided by 365.**'
Explanation *This amendment would include the breach of Pillar I capital requirements in the list of breaches with regard to which Member States must give their competent authorities the power to impose administrative penalties. Although the imposition of administrative pecuniary penalties may not be effective/proportionate in all such cases, it should still be possible to pursue natural persons (i.e. management) responsible for those breaches. Breaches of supervisory decisions and regulations and the lack of request for prior permission or notification to the supervisor should also be covered. Additionally, a reference to Article 100 of Regulation (EU) No 575/2013 should be included to cover breaches of additional reporting requirements.* *Paragraphs 2 and 3 include adjustments to reflect the recommended changes to Article 65.*	
Amendment 20 Article 74(3a) of the CRD (new)	
No text	'**3a. Member States shall ensure that institutions notify the competent authority in writing of any proposed change to the Articles of Association of the institution, prior to their adoption.** **Competent authorities shall have the power to**

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
	object to the proposed changes within 30 working days from receipt of the notification, if they prejudice the sound and prudent management of the institution.'
Explanation *Some Member States have legislation providing competent authorities with the power to object to the adoption of certain changes to an institution's Articles of Association. ECB staff proposes a provision in Union law to expressly harmonise this power in all Member States.*	
Amendment 21 Article 85a of the CRD (new)	
No text	'***Article 85a*** ***Outsourcing of material activities*** **1. Institutions shall inform the competent authorities at least three months prior to outsourcing of material activities. The competent authorities shall also be informed if the contracts and arrangements relating to the outsourcing of material activities are substantially changed, such as where the activities are outsourced to a subcontractor.** **2. When outsourcing their activities, institutions shall comply with the following requirements:** **(a) outsourcing arrangements shall not result in the delegation of senior management's responsibility;** **(b) the outsourcing institution shall adopt a policy on its approach to outsourcing, including contingency plans and exit strategies.** **3. If an outsourcing arrangement does not comply with the requirements set out in paragraph 2, the competent authority may request the institution to amend or terminate**

<table>
<tr><th>Text proposed by the European Commission or current text of the CRD</th><th>Amendments proposed by the ECB[1]</th></tr>
<tr><td></td><td>the outsourcing arrangement.</td></tr>
<tr><td colspan="2"><u>Explanation</u>
This amendment aims to harmonise the process for informing competent authorities about outsourcing of material activities as well as the prudential requirements to be applied.</td></tr>
<tr><td colspan="2">Amendment 22
Article 88(1) of the CRD</td></tr>
<tr><td>‘1. […]
Member States shall ensure that the management body monitors and periodically assesses the effectiveness of the institution's governance arrangements and takes appropriate steps to address any deficiencies.’</td><td>‘1. […]
Member States shall ensure that the management body monitors and periodically assesses the effectiveness of the institution's governance arrangements and takes appropriate steps to address any deficiencies.
Member States shall at least ensure that management bodies of an institution monitor loans to related parties on an ongoing basis and notify such loans to the competent authority. Competent authorities shall have the power to prohibit or limit such loans if they give rise to any conflicts of interest.’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
This amendment provides the competent authorities with the power to prohibit credit to parties related to a credit institution where such credit gives rise to a conflict of interest.</td></tr>
<tr><td colspan="2">Amendment 23
Article 91(1) of the CRD</td></tr>
<tr><td>‘1. Members of the management body shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties. The overall composition of the management body shall reflect an adequately broad range of experiences. Members of the management body shall, in particular, fulfil the requirements set out in paragraphs 2 to 8.’</td><td>‘1. <s>Members</s> Institutions, including financial holding companies and mixed financial holding companies shall have the primary responsibility for ensuring that members of the management body shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties. <s>The overall composition of the management</s></td></tr>
</table>

Text proposed by the European Commission or current text of the CRD	**Amendments proposed by the ECB**[1]
	~~body shall reflect an adequately broad range of experiences.~~ Members of the management body shall, in particular, fulfil the requirements set out in paragraphs 2 to 8.'
<u>*Explanation*</u> *It should be clarified that the suitability of members of the management body is the primary responsibility of the institutions. This requirement should also apply to (mixed) financial holding companies.*	
Amendment 24 Article 91(3a) of the CRD (new)	
No text	'**3a. The qualitative requirement under paragraph 2 and the quantitative requirement under paragraph 3 shall be separately assessed and cumulatively complied with.**'
<u>*Explanation*</u> *It should be clarified that when assessing time commitment both qualitative and quantitative criteria should be taken into account.*	
Amendment 25 Article 91(4) of the CRD	
'4. For the purposes of paragraph 3, the following shall count as a single directorship: (a) executive or non-executive directorships held within the same group; (b) executive or non-executive directorships held within: (i) institutions which are members of the same institutional protection scheme provided that the conditions set out in Article 113(7) of Regulation (EU) No 575/2013 are fulfilled; or (ii) undertakings (including non-financial entities) in which the institution holds a qualifying holding.'	'4. For the purposes of paragraph 3, the following shall count as a single directorship: (a) executive or non-executive directorships held within the same group; **For the purposes of this paragraph, "group" is defined as in Article 2(11) of Directive 2013/34/EU of the European Parliament and of the Council*;** (b) executive or non-executive directorships held within: (i) institutions which are members of the same institutional protection scheme provided that the conditions set out in Article 113(7) of Regulation (EU) No 575/2013 are fulfilled; or (ii) undertakings (including non-financial entities) in

Text proposed by the European Commission or current text of the CRD	**Amendments proposed by the ECB**[1]
	which the institution holds a qualifying holding. (*) **Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).**’
Explanation *This amendment makes an addition to point (a) to clarify the concept of ‘group’ with regard to time commitment.*	
Amendment 26 Article 91(5a) of the CRD (new)	
No text	‘**5a. When determining the nature of the organisation for the purposes of paragraph *5*, consideration shall be given to the objectives of the organisation and to whether:** **(a) the organisation predominantly offers goods and services of economic value (directly or indirectly) in return for profit or salary on a continuous basis; and** **(b) the profits or other income are used for promoting the non-commercial objectives of the organisation and for covering the various costs of the organisation including staff and maintenance.**’
Explanation *In practice it is not clear when organisations would not be deemed to pursue predominantly commercial objectives. National approaches included in national civil, commercial, administrative or other law vary considerably which leads to different counting practices. The proposed amendment aims to harmonise the varying national approaches.*	

<table>
<tr><th>Text proposed by the European Commission or current text of the CRD</th><th>Amendments proposed by the ECB[1]</th></tr>
<tr><td colspan="2">Amendment 27
Article 91(7) of the CRD</td></tr>
<tr><td>‘7. The management body shall possess adequate collective knowledge, skills and experience to be able to understand the institution's activities, including the main risks.’</td><td>‘7. The management body shall possess adequate collective knowledge, skills and experience to be able to understand the institution's activities, including the main risks. The overall composition of the management body shall reflect an adequately broad range of experience.’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
In line with the proposed amendment to Article 91(1) of the CRD this sentence should be moved to paragraph 7 since it refers to collective suitability which applies only to members of the management body.</td></tr>
<tr><td colspan="2">Amendment 28
Article 91a of the CRD(new)</td></tr>
<tr><td>No text</td><td>‘Article 91a
Assessment procedure
1. Institutions, including financial holding companies and mixed financial holding companies, shall assess whether:
(a) the members of the management body as referred to in Articles 23(1)(b), 91(1) and 121 comply with the requirements set out in Article 91(1) on an ongoing basis; and
(b) the requirement under Article 91(7) is fulfilled by members of the management on an ongoing basis.
2. Institutions, including financial holding companies and mixed financial holding companies, shall establish internal policies and procedures to adequately conduct these assessments.
3. Institutions, including financial holding companies and mixed financial holding</td></tr>
</table>

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
	companies, shall submit to the competent authorities all relevant documentation necessary for the assessment by the competent authorities of changes in the management body of an institution. **4. Competent authorities shall have a maximum of four months to finish the assessment. The time period for the assessment will not begin to run until all of the necessary information has been received. If during the assessment additional information (in writing or via an interview) is required or a hearing needs to be conducted, the period of four months shall be suspended pending the receipt of such information or until the hearing is conducted. The total assessment time from the date of receipt of the application (including any period of suspension) shall not exceed six months.** **If within six months of receipt of the application any requested additional information has not been provided, the competent authority shall not be required to take a decision on the assessment and the application relating to the proposed member of the management body shall be considered not approved.** **5. Member States shall ensure that competent authorities have the power to take measures, such as imposing requirements, recommendations, and conditions, including the power to remove a member of the management body where that person no longer complies with the requirements of Article 23(1)(b), Article 91(1) or Article 121.**’
<u>Explanation</u> *At present the CRD lacks procedural requirements regarding the fit and proper assessments. The proposed new Article clarifies the primary responsibility of the institutions and the assessment which they have to conduct as well as the supervision by the competent authorities. At present national assessment*	

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
procedures vary with regard to several procedural aspects: (1) there are both ex ante and ex post assessments; (2) the issue of whether a decision has to be taken or whether there can be silent approval/rejection; and (3) the assessment period (some Members States have a deadline of one or a few months and in other Member States there is no deadline and sometimes a director fulfils their function for a year or more before being assessed. In those cases it is difficult to remove a member of the management body who is not suitable). *The consequences of these differences are: (1) the suitability of members of the management body is not ensured in a harmonised way, which impacts the level playing field; and (2) the ECB is hindered in its day-to-day work as it has to apply different national approaches.* *This proposal aims to harmonise the assessment approaches and to enhance the level playing field.*	
Amendment 29 Article 91b of the CRD (new)	
No text	***'Article 91b*** ***Key function holders*** **1. Institutions shall have the primary responsibility for ensuring that key function holders are at all times of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties. Key function holders shall, in particular, fulfil the requirements set out in Article 91(2) and (8) on an ongoing basis. Institutions shall establish internal policies and procedures to adequately conduct and report these assessments.** **2. Institutions shall provide the competent authorities with all relevant documentation on their relevant internal policies and the assessments of key function holders, if requested.** **3. Member States shall ensure that competent authorities have, for institutions that are significant within the meaning of Directive 2013/36/EU, the power to assess and take supervisory measures, including the power to remove a key function holder where they no**

Text proposed by the European Commission or current text of the CRD	**Amendments proposed by the ECB**[1]
	longer comply with the requirements of the paragraph 1.’
Explanation *Key function holders have an important impact on the day-to-day management of institutions and in their overall governance structures. The assessment of key function holders of significant institutions by supervisory authorities is currently not mentioned in the Union legislative framework, leading to different national approaches. To ensure a level playing field on supervision of key function holders among Member States it is necessary to harmonise the supervisory approaches.*	
Amendment 30 Point (15) of Article 1 of the proposed directive (Article 92(1) and (2) of the CRD)	
‘(15) Article 92 is amended as follows: (a) Paragraph 1 is deleted. (b) In paragraph 2, the introductory phrase is replaced by the following: “Competent authorities shall ensure […] scope and complexity of their activities.”’	‘(15) **In paragraph 2 of** Article 92 ~~is amended as follows:~~ ~~(a) Paragraph 1 is deleted.~~ (b) ~~In paragraph 2,~~ the introductory phrase is replaced by the following: “Competent authorities shall ensure […] scope and complexity of their activities.”’
Explanation *The proposal does not seem coherent with the main objective of the amendments on remuneration.* *In fact, while the main changes aim at introducing new criteria to allow some waivers for small and less complex institutions (as well as in case of low level of remuneration) and are exclusively related to compliance with the requirements on the use of instruments to be included within the variable remuneration and the application of the deferral rules, the deletion of Article 92(1) could generate some confusion and lack of clarity on the overall scope of the CRD.*	
Amendment 31 Point (18)(c) of Article 1 of the proposed directive (Article 98(5a) of the CRD)	
‘5a. EBA shall develop draft regulatory technical standards to specify for the purpose of paragraph 5:	~~‘5a. EBA shall develop draft regulatory technical standards to specify for the purpose of paragraph 5:~~

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
(a) six supervisory shock scenarios to be applied to interest rates for every currency;	~~(a) six supervisory shock scenarios to be applied to interest rates for every currency;~~
(b) common modelling and parametric assumptions that institutions shall reflect in their calculation of the economic value of equity under paragraph 5;	~~(b) common modelling and parametric assumptions that institutions shall reflect in their calculation of the economic value of equity under paragraph 5;~~
(c) whether supervisory measures shall also be required in the case of a decline in the institutions' net interest income referred to in Article 84(1) as a result of potential changes in interest rates.	~~(c) whether supervisory measures shall also be required in the case of a decline in the institutions' net interest income referred to in Article 84(1) as a result of potential changes in interest rates.~~
EBA shall submit those draft regulatory technical standards to the Commission by [one year after entry into force].	~~EBA shall submit those draft regulatory technical standards to the Commission by [one year after entry into force].~~
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.'	~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.'~~

Explanation

The draft mandate for the EBA contained in the proposed Article 98(5a) suggests a closed list of cases where supervisory measures would be required as a result of changes in interest rates. However, the Basel Committee on Banking Supervision (BCBS) standards leave room for supervisors to request supervisory measures for banks whose interest rate risk in the banking book (IRRBB) is a source of concern, besides cases singled out by outlier thresholds.

The Commission's proposal does not reflect the need to develop additional criteria to support supervisors in the identification of outlier banks in addition to those formulated by the BCBS standards. In particular, no criterion is currently available to single out banks that have excessive IRRBB with respect to their earnings. The EBA could be mandated with the task of developing additional criteria for the identification of banks as outliers.

Amendment 32

Point (21)(a) of Article 1 of the proposed directive

(Article 104(1)(d) of the CRD)

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB
'(d) to require institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;'	'(d) to require institutions to apply a specific provisioning policy or treatment of assets **or off-balance sheet items** in terms of own funds requirements **or, when the applicable accounting**

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
	framework allows for flexibility in selecting policies or requires subjective estimations, and the specific implementation chosen by the institution is not adequate or sufficiently prudent from a supervisory point of view, to require institutions to apply specific provisions, deductions or filters for the calculation of own funds only;’
Explanation	
The Commission’s report on the SSM review[6] clarified that the ECB has the possibility of influencing a bank’s provisioning level within the limits of the applicable accounting framework and of applying the necessary adjustments (deductions, filters or similar measures) if, for example, accounting provisioning is not sufficient from a supervisory perspective. Whilst these powers do not amount to accounting powers that would allow the ECB to impose a specific provision, they do allow the ECB to influence a bank’s provisioning policy within the limits of accounting standards, for instance where such a framework allows for flexibility in selecting policies or requires subjective estimations, and the specific implementation chosen by the institution is not adequate or sufficiently prudent from a supervisory perspective. ECB staff is of the view that such a clarification should be included directly in the text of the CRD to ensure legal certainty.	
Amendment 33 Point (21)(a) of Article 1 of the proposed directive (Article 104(1)(e) of the CRD)	
‘(e) to restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution;’	‘(e) to **authorise,** restrict or limit the business, **qualifying holdings/acquisitions,** operations or network of institutions**, including those in third countries,** or to request the divestment of activities that pose excessive risks to the soundness of an institution;’

6 Report from the Commission to the European Parliament and the Council on the Single Supervisory Mechanism established pursuant to Regulation (EU) No 1024/2013, Brussels, 11 October 2017, COM(2017) 591 final.

<table>
<tr><th>Text proposed by the European Commission or current text of the CRD</th><th>Amendments proposed by the ECB[1]</th></tr>
<tr><td colspan="2"><u>Explanation</u>
This adjustment is necessary because of the proposed new Articles 27a and 27b of the CRD.
Furthermore, it is useful to include the clarification that the competent authority can exercise powers over third country activities of a credit institution.</td></tr>
<tr><td colspan="2">Amendment 34
Point (21)(a) of Article 1 of the proposed directive
(Article 104(1)(l) of the CRD)</td></tr>
<tr><td>‘(l) to require additional disclosures on an ad hoc basis only.’</td><td>‘(l) to require additional disclosures ~~on an ad hoc basis only~~**.**’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The proposal limits supervisory powers, constraining the ability to require additional disclosures to ‘on an ad hoc basis only’, thereby weakening one of the qualitative tools that a supervisor can use to address, for instance, lack of cooperation from banks.</td></tr>
<tr><td colspan="2">Amendment 35
Point (21)(a) of Article 1 of the proposed directive
(Article 104(2) of the CRD)</td></tr>
<tr><td>‘2. For the purposes of paragraph 1(j), competent authorities may only impose additional or more frequent reporting requirements on institutions where the information to be reported is not duplicative and one of the following conditions is met:
(a) either of the conditions referred to in points (a) and (b) of Article 102(1) has been met;
(b) the competent authority deems reasonable to impose those requirements to gather the evidence referred in Article 102(1)(b):
(c) the additional information is required for the duration of the institution's supervisory examination programme in accordance with Article 99.
Information that may be required from institutions</td><td>‘2. For the purposes of paragraph 1(j), competent authorities may only impose additional or more frequent reporting requirements on institutions where the information to be reported is not duplicative and one of the following conditions is met:
(a) either of the conditions referred to in points (a) and (b) of Article 102(1) has been met;
(b) the competent authority deems reasonable to impose those requirements to gather the evidence referred in Article 102(1)(b):
(c) the additional information is required for the duration of the institution's supervisory examination programme in accordance with Article 99 **or for the purpose of the supervisory review and**</td></tr>
</table>

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
shall be deemed as duplicative as referred to in the first subparagraph where the same or substantially the same information is already available to the competent authority, may be produced by the competent authority or obtained through other means than a requirement on the institution to report it. Where information is available to the competent authority in a different format or level of granularity than the additional information to be reported, the competent authority shall not require the additional information where that different format or granularity does not prevent it from producing substantially similar information.’	**evaluation process as referred to in Article 97.** Information that may be required from institutions shall be deemed as duplicative as referred to in the first subparagraph where ~~the same or substantially~~ the same information is already available to the competent authority, may be produced by the competent authority or obtained through other means than a requirement on the institution to report it. Where information is available to the competent authority in a different format ~~or level of granularity~~ than the additional information to be reported, the competent authority shall not require the additional information where that different format ~~or granularity~~ does not prevent it from producing substantially similar information.’
<u>*Explanation*</u> *Although ECB staff shares the underlying objective of avoiding duplication and is very mindful of reporting costs, the ability to require ad hoc granular data is essential to perform a proper assessment of institutions’ risk profile for the purpose of Pillar 2. Indeed, Pillar 2 covers risks that are not or insufficiently covered under Pillar 1, which is by definition difficult to fully capture ex ante through harmonised reporting, also because of the evolving nature of institutions' activities and risks. While the Supervisory Board strives to the fullest extent possible to also use harmonised reporting for the Pillar 2 analyses, there is a limit to what such reporting allows. This means that supervisors will always need to collect additional granular information to adequately assess banks' strengths and weaknesses within Pillar 2, e.g. on non-performing loans. Therefore these limitations should be removed from the proposed amendments to the CRD.*	
Amendment 36 Point (22) of Article 1 of the proposed directive (Article 104a(2) of the CRD)	
‘2. […] For the purposes of the first subparagraph, the capital considered adequate shall cover all material risks or elements of such risks that are not subject to a specific own funds requirement. This may	‘2. […] ~~For the purposes of the first subparagraph, the capital considered adequate shall cover all material risks or elements of such risks that are not subject to a specific own funds requirement. This may~~

Text proposed by the European Commission or current text of the CRD	**Amendments proposed by the ECB**[1]
include risks or elements of risks that are explicitly excluded from the own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013. […]'	~~include risks or elements of risks that are explicitly excluded from the own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013.~~ […]'
<u>*Explanation*</u> *ECB staff would welcome confirmation that the first subparagraph of Article 104a(2) specifies that additional own fund requirements can be imposed not only on risks not covered by Pillar 1 but also on risks or elements of risks which are not sufficiently covered – e.g. exposures for which the current risk weight in Pillar 1 does not adequately reflect the risks.*	
Amendment 37 Point (22) of Article 1 of the proposed directive (Article 104a(4) of the CRD)	
'4. The institution shall meet the additional own funds requirement referred to in Article 104(1)(a) with own funds instruments subject to the following conditions: (a) at least three quarters of the additional own funds requirement shall be met with Tier 1 capital; (b) at least three quarters of the Tier 1 capital shall be composed of CET 1 capital. Own funds used to meet the additional own funds requirement referred to in Article 104(1)(a) shall not be used towards meeting any of the own funds requirements set out in points (a), (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013 or the combined buffer requirement defined in Article 128(6) of this Directive. By way of derogation from the second subparagraph, own funds used to meet the additional own funds requirement referred to in Article 104(1)(a) imposed by competent authorities to address risks or elements of risks not sufficiently covered by Article 92(1)(d) of Regulation (EU) No	'4. The **competent authority** ~~institution~~ shall **require institutions to** meet the additional own funds requirement referred to in Article 104(1)(a) with own funds instruments subject to the following conditions: (a) at least three quarters of the additional own funds requirement shall be met with Tier 1 capital; (b) at least three quarters of the Tier 1 capital shall be composed of CET 1 capital. **Competent authorities may require institutions to meet the additional own funds requirements referred to in Article 104(1)(a) with CET 1 capital.** Own funds used to meet the additional own funds requirement referred to in Article 104(1)(a) shall not be used towards meeting any of the own funds requirements set out in points (a), (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013 or the combined buffer requirement defined in Article 128(6) of this Directive. By way of derogation from the **third** ~~second~~

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
575/2013 may be used to meet the combined buffer requirement referred to in Article 128(6) of this Directive.'	subparagraph, own funds used to meet the additional own funds requirement referred to in Article 104(1)(a) imposed by competent authorities to address risks or elements of risks not sufficiently covered by Article 92(1)(d) of Regulation (EU) No 575/2013 may be used to meet the combined buffer requirement referred to in Article 128(6) of this Directive.'
<u>Explanation</u> *ECB staff considers that competent authorities should have the ability to set a composition requirement for the additional own funds and impose additional own funds requirements to be met solely by CET 1 capital. From a prudential perspective, the banking crisis and more recent market events showed that there can be significant challenges in dealing for example with Additional Tier 1 (AT 1) instruments whose loss absorbing capacities are not as efficient as CET 1 instruments and whose costs would jeopardise even further banks' profitability.*	
Amendment 38 Point (22) of the proposed directive (Article 104a(6) of the CRD)	
'6. EBA shall develop draft regulatory technical standards specifying how the risks and elements of risks referred to in paragraph 2 shall be measured. EBA shall ensure that the draft regulatory technical standards are proportionate in light of: (a) the implementation burden on institutions and competent authorities; and (b) the possibility that the general higher level of capital requirements that apply where institutions do not use internal models may justify the imposition of lower capital requirements when assessing risks and elements of risks in accordance with paragraph 2. EBA shall submit those draft regulatory technical standards to the Commission by [one year after entry into force].	~~'6. EBA shall develop draft regulatory technical standards specifying how the risks and elements of risks referred to in paragraph 2 shall be measured.~~ ~~EBA shall ensure the draft regulatory technical standards are proportionate in light of :~~ ~~(a) The implementation burden on institutions and competent authorities; and~~ ~~(b) the possibility that the general higher level of capital requirements that apply where institutions do not use internal models may justify the imposition of lower capital requirements when assessing risks and elements of risks in accordance with paragraph 2.~~ ~~EBA shall submit those draft regulatory technical standards to the Commission by [one year after entry into force].~~

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<tr><th>Text proposed by the European Commission or current text of the CRD</th><th>Amendments proposed by the ECB[1]</th></tr>
<tr><td>Power is conferred on the Commission to adopt the regulatory technical standards referred to in paragraph 6 in accordance with Articles 10-14 of Regulation (EU) No 1093/2010.’</td><td>~~Power is conferred on the Commission to adopt the regulatory technical standards referred to in paragraph 6 in accordance with Articles 10-14 of Regulation (EU) No 1093/2010.’~~</td></tr>
<tr><td colspan="2"><u>Explanation</u>
While in general ECB staff supports supervisory convergence, the EBA’s mandate to develop regulatory technical standards to further significantly frame the determination of additional own funds requirements is not the appropriate tool to achieve this objective. First, the essence of the Pillar 2 requirements is to be institution-specific and the determination of the Pillar 2 requirements requires supervisory judgement, while using EBA technical standards in full or for parts of the risk elements would not result in a risk-based approach catering for the diversity of institutions’ risk profiles and would even prevent supervisors from keeping pace with risks and industry developments. Second, the necessary common basis for a consistent implementation of the supervisory review and evaluation process (SREP) in the Union is already provided by the EBA guidelines, which allows for an adequate degree of supervisory judgement and can be complemented by the use of EBA peer reviews. Over the past years, convergence has improved considerably with the implementation of the EBA guideline and the implementation of the ECB’s SREP methodology within the Single Supervisory Mechanism (SSM). Considering these positive developments, ECB staff is of the view that the current framework has not proven inadequate and that the Single Market will continue to reap all of the benefits in terms of convergence from the existing tools, possibly complemented by the use of EBA peer reviews.</td></tr>
<tr><td colspan="2">Amendment 39
Point (22) of the proposed directive
(Article 104b(1) of the CRD)</td></tr>
<tr><td>‘1. Pursuant to the strategies and processes referred to in Article 73 and after consulting the competent authority, institutions shall establish an adequate level of own funds that is sufficiently above the requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013 and in this Directive, including the additional own funds requirements imposed by the competent authorities in accordance with Article 104(1)(a), in order to ensure that:
(a) cyclical economic fluctuations do not lead to a</td><td>‘1. Pursuant to the strategies and processes referred to in Article 73 and after consulting the competent authority, institutions shall establish an adequate level of own funds that is sufficiently above the requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013 and in this Directive, including the additional own funds requirements imposed by the competent authorities in accordance with Article 104(1)(a), in order ~~to ensure~~ that (a) ~~cyclical economic fluctuations do not lead to a breach of those requirements; and~~</td></tr>
</table>

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
breach of those requirements; and (b) the institution's own funds can absorb, without breaching the own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013 and the additional own funds requirements imposed by the competent authorities in accordance with Article 104(1)(a), potential losses identified pursuant to the supervisory stress test referred to in Article 100.'	~~(b)~~the institution's own funds can absorb **potential losses identified pursuant to the supervisory stress test referred to in Article 100**, without breaching **either:** **(a)** the own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013 and the additional own funds requirements imposed by the competent authorities in accordance with Article 104(1)(a) **where competent authorities shall take into account credible management actions and dynamic adjustments to the balance sheet that may take place over the projection horizon, or** **(b) a minimum fixed level of own funds set by the competent authorities, where competent authorities may take into account credible management actions and dynamic adjustments to the balance sheet that may take place over the projection horizon.'** ~~potential losses identified pursuant to the supervisory stress test referred to in Article 100.~~ […] **6. The EBA shall review and report to the Commission on the application of this Article, including paragraph 1 (a) and (b) within the three years following the entry into force of this Directive. On the basis of this report the Commission shall, if appropriate, submit a legislative proposal to the European Parliament and the Council.'**

Explanation

The reference to 'cyclical economic fluctuations' in Article 104b(1)(a) should be removed, as it may lead to confusion with the Countercyclical Capital Buffer (CCyB), e.g. the Pillar 2 Guidance (P2G) may be adapted to the cyclical economic fluctuations thus counteracting the effect of the CCyB.

The current drafting of Article 104b should be further amended to clarify that the competent authorities are allowed to apply as a starting point in the calculation of the P2G a fixed threshold that is common to

<table>
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<tr><td colspan="2">all banks and which can be lower than the total SREP capital requirement (TSCR), which is consistent with international best practices. The flexibility to use a fixed threshold should therefore be available as a permanent option and the use of the TSCR conditioned on the nature of the stress test. In fact, the use of the TSCR as a threshold, coupled with a static balance sheet assumption for the adverse scenario, may lead to unwarranted outcomes. The capital demand may increase to an unjustifiably high level by not giving due recognition to the likely management actions and other balance sheet adjustments in the overall stress test impact. A requirement to comply with the TSCR under the adverse scenario is moreover equivalent to assigning a probability of one to the occurrence of the adverse scenario. It is therefore suggested that the TSCR is adopted as a threshold only if the competent authority takes into account credible management actions and dynamic adjustments to the balance sheet that take place over the projection horizon.
It is also proposed to add a provision regarding a three-year review to assess whether on the basis of the experience gained other adjustments are needed.</td></tr>
<tr><td colspan="2">Amendment 40
Point (22) of the proposed directive
(Article 104c of the CRD)</td></tr>
<tr><td>‘1. Competent Authorities shall consult resolution authorities prior to determining any additional own funds requirement referred to in Article 104(1)(a) and prior to communicating to institutions any expectation for adjustments to the level of own funds in accordance with Article 104b. For these purposes, competent authorities shall provide resolution authorities with all available information.
2. Competent authorities shall inform the relevant resolution authorities about the additional own funds requirement imposed on institutions pursuant to Article 104(1)(a) and about any expectation for adjustments to the level of own funds communicated to institutions in accordance with Article 104b.’</td><td>~~‘1. Competent Authorities shall consult resolution authorities prior to determining any additional own funds requirement referred to in Article 104(1)(a) and prior to communicating to institutions any expectation for adjustments to the level of own funds in accordance with Article 104b. For these purposes, competent authorities shall provide resolution authorities with all available information.~~
~~2. Competent authorities shall inform the relevant resolution authorities about the additional own funds requirement imposed on institutions pursuant to Article 104(1)(a) and about any expectation for adjustments to the level of own funds communicated to institutions in accordance with Article 104b.’~~</td></tr>
<tr><td colspan="2"><u>Explanation</u>
While ECB staff supports the objective of achieving effective coordination with resolution authorities, the obligation to conduct a formal consultation of resolution authorities prior to determining additional own fund requirements or providing guidance as specified in the CRD would prove unnecessarily burdensome</td></tr>
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<table>
<tr><th>Text proposed by the European Commission or current text of the CRD</th><th>Amendments proposed by the ECB[1]</th></tr>
<tr><td colspan="2">and unduly formalistic in practice, without improving the substance of the current arrangements. Moreover, the existing Memorandum of Understanding between the ECB and the Single Resolution Board already ensures efficient cooperation. Taking into account the non-binding nature of capital guidance, the decision to impose such guidance should remain outside the framework of joint decisions and should be subject only to an exchange of information between college members.</td></tr>
<tr><td colspan="2">Amendment 41
Point (26) of the proposed directive
(Article 113(1)(c)of the CRD)</td></tr>
<tr><td>‘1. […]
(b) on measured to address any significant matters and material findings relating to liquidity supervision including relating to the adequacy of the organisation and the treatment of risks as required pursuant to Article 86 and relating to the need for institution-specific liquidity requirements in accordance with Article 105 of this Directive
(c) on any expectation for adjustments to the consolidated level of own funds in accordance with Article 104b(3).’</td><td>‘1. […]
(b) on measured to address any significant matters and material findings relating to liquidity supervision including relating to the adequacy of the organisation and the treatment of risks as required pursuant to Article 86 and relating to the need for institution-specific liquidity requirements in accordance with Article 105 of this Directive~~;~~.
~~(c)~~ The consolidating supervisor shall inform the competent authorities responsible for the supervision of subsidiaries of an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company in a Member State of ~~on~~ any expectation for adjustments to the consolidated level of own funds in accordance with Article 104b(3).’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
ECB staff also suggests replacing the requirement of a joint decision on capital guidance by a requirement to exchange such information with college members to avoid any confusion between the legally binding nature of Pillar 2 requirements, which are subject to a joint decision, and the non-binding nature of the guidance.</td></tr>
</table>

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
Amendment 42 Article 136(3) and (7) and the final subparagraph of the CRD	
‘3. Each designated authority shall assess and set the appropriate countercyclical buffer rate for its Member State on a quarterly basis, and in so doing shall take into account: […] 7. Each designated authority shall announce the quarterly setting of the countercyclical buffer rate by publication on its website. The announcement shall include at least the following information: […] Designated authorities shall notify each quarterly setting of the countercyclical buffer rate and the information specified in points (a) to (g) to the ESRB. The ESRB shall publish on its website all such notified buffer rates and related information.’	‘3. Each designated authority shall assess **the intensity of cyclical, macroprudential or systemic risk on a quarterly basis** and**, in the event of changes,** set **or adjust** the appropriate countercyclical buffer rate for its Member State~~ on a quarterly basis, and~~**;** in so doing, **each designated authority** shall take into account: […] 7. Each designated authority shall announce the quarterly ~~setting of the~~ **applicable** countercyclical buffer rate by publication on its website. The announcement shall include at least the following information: […] Designated authorities shall notify~~ each quarterly setting of~~ the **applicable** countercyclical buffer rate and the information specified in points (a) to (g) to the ESRB **quarterly**. The ESRB shall publish on its website all such notified buffer rates and related information. **Designated authorities of participating Member States, as defined by Council Regulation (EU) No 1024/2013*, shall also notify the applicable countercyclical buffer rate and the information specified in points (a) to (g) to the ECB quarterly.** ****) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.02013, p. 63).**’
<u>Explanation</u> *The aim of this proposal is to remove the requirement to set a countercyclical capital buffer on a quarterly*	

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
basis, unless there is a change to the rate. As such, the ECB would only be notified if there was a change in the buffer rate and not quarterly.	
Amendment 43 Article 124(1a) of the CRD (new)	
No text	**‘1a. Articles 53(1) and 54 shall not preclude the competent authorities from exchanging with parent undertakings, financial holding companies and mixed financial holding companies confidential information regarding any of their subsidiaries included in the scope of consolidation.‘**
<u>*Explanation*</u> *The purpose of this amendment is to make clear that it is permissible to exchange institution-specific information regarding subsidiaries at the highest level within the group.*	
Amendment 44 Article 133(11) and (12) of the CRD	
‘11. […] (e) the justification for why none of the existing measures in this Directive or in Regulation (EU) No 575/2013, excluding Articles 458 and 459 of that Regulation, alone or in combination, will be sufficient to address the identified macroprudential or systemic risk taking into account the relative effectiveness of those measures; 12. […] (e) the justification for why none of the existing measures in this Directive or in Regulation (EU) No 575/2013, excluding Articles 458 and 459 of that Regulation, alone or in combination, will be sufficient to address the identified macroprudential or systemic risk taking into account the relative effectiveness of those measures;	‘11. […] ~~(e) the justification for why none of the existing measures in this Directive, or in Regulation (EU) No 575/2013, excluding Articles 458 and 459 of that Regulation, alone or in combination, will be sufficient to address the identified macroprudential or systemic risk taking into account the relative effectiveness of those measures;~~ 12. […] ~~(e) the justification for why none of the existing measures in this Directive, or in Regulation (EU) No 575/2013, excluding Articles 458 and 459 of that Regulation, alone or in combination, will be sufficient to address the identified macroprudential or systemic risk taking into account the relative effectiveness of those measures;~~

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
[…]’	[…]

Explanation

The purpose of this amendment is to enhance the efficiency, effectiveness and timeliness of macroprudential policy by simplifying the activation procedure for the systemic risk buffer by removing the mandatory sequencing requirements, i.e. the requirement that certain CRD IV measures (e.g. Pillar 2 or capital buffers), or certain CRR measures (e.g. measures under Articles 124 and 164) should be considered first and authorities should justify why those measures cannot adequately address macroprudential or systemic risk.

Amendment 45

Point (31) of Article 1 of the proposed directive

(Article 141(5) of the CRD)

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
‘5. The sum to be multiplied in accordance with paragraph 4 shall consist of: (a) interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in point (a), (b) or (c) of the second subparagraph of paragraph 2 of this Article; plus (a) year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in point (a), (b) or (c) of the second subparagraph of paragraph 2 of this Article; minus (b) amounts which would be payable by tax if the items specified in points (a) and (b) of this paragraph were to be retained.’	‘5. The sum to be multiplied in accordance with paragraph 4 shall consist of: (a) interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 ~~that have been generated since the most recent decision on the distribution of profits or~~ **net of any amount paid following** any of the actions referred to in point (a), (b) or (c) of the second subparagraph of paragraph 2 of this Article; plus (~~a~~**b**) year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 ~~that have been generated since the most recent decision on the distribution of profits or~~ **net of any amount paid following** any of the actions referred to in point (a), (b) or (c) of the second subparagraph of paragraph 2 of this Article; ~~**plus**~~ ~~**(c) retained earnings, interim and year-end profits already included in the Common Equity Tier 1 capital to the extent that they are**~~

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
	~~**generated on a recurring basis and provided that (i) distributions are limited to an amount that prevents the institution from decreasing its Common Equity Tier 1 capital to a lower quartile of the combined buffer requirement; (ii) the institution demonstrates to the satisfaction of the competent authority that it is able to generate such profits in the 12 months following the breach; and (iii) the competent authority approves the capital conservation plan referred to in Article 142;**~~ minus (~~c~~**d**) amounts which would be payable by tax if the items specified in points (a) and (b) of this paragraph were to be retained.’
<u>Explanation</u> *It should be made clearer that all interim/year-end profits that are not already included in CET 1 capital (net of any distributions already paid out) should be included in the maximum distributable amount (MDA) and not only those generated after the most recent distribution. The reason for this is that focusing on the most recent distribution or last payment unduly constrains profits that may be used for calculating the MDA. Since institutions often have multiple dates for paying out coupons, dividends and bonuses, the more frequently an institution includes its profits as CET 1 capital or makes decisions or payments on distributions, the shorter the period and thus the smaller the amount of profits eligible to be used in the MDA calculation. Such a restriction is not justified if the interim/year-end profits generated and not already included as CET 1 capital are higher than any distributions made.*	
Amendment 46 Article 152 of the CRD	
‘Host Member States may, for statistical purposes, require that all credit institutions having branches within their territories shall report periodically on their activities in those host Member States to the competent authorities of those host Member States. […]’	‘Host Member States may, for statistical purposes, require that all credit institutions having branches within their territories shall report periodically on their activities in those host Member States to the competent authorities of those host Member States. **Having regard to the systemic importance of**

Text proposed by the European Commission or current text of the CRD	Amendments proposed by the ECB[1]
	significant branches, and without prejudice to the single market, further exchange of information shall be agreed upon between the relevant competent authorities where necessary. […]’
Explanation *The aim of this amendment is to emphasise the possibility for competent authorities to agree upon increased exchange of information (e.g. through memoranda of understanding).*	

Drafting proposals in relation to proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements and amending Regulation (EU) No 648/2012

and

further proposed amendments to the current text of the Capital Requirements Regulation (CRR)

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
Amendment 1 Recital 20a of the proposed regulation (new)	
No text	**‘(20a) This Regulation sets out detailed qualification criteria for loans and instruments to qualify as Additional Tier 1 and Tier 2 capital instruments. Because of the need for a level playing field within the Union, competent authorities should not require further pre-approval permission with regard to the contracts governing Additional Tier 1 and Tier 2 capital instruments.’**
<u>*Explanation*</u> *For CET 1 instruments, the CRR is a maximum harmonisation instrument with regard to the process for the qualification of instruments as CET 1 instruments. The proposed amendment interprets the CRR as a maximum harmonisation instrument also for the process of qualification of instruments as Additional Tier 1 (AT 1) and T 2 instruments. In particular it clarifies that the competent authorities should not gold-plate the CRR by pre-approval processes.*	
Amendment 2 Point (1) of Article 1 of the proposed regulation (Article 1 of the CRR)	
‘[…] This Regulation does not govern publication	‘[…] This Regulation does not govern publication

7 Bold in the body of the text indicates where ECB staff proposes inserting new text. Strikethrough in the body of the text indicates where ECB staff proposes deleting text.

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
requirements for competent authorities in the field of prudential regulation and supervision of institutions as set out in Directive 2013/36/EU.’	requirements for competent authorities in the field of prudential regulation and supervision of institutions as set out in Directive 2013/36/EU. **For the purposes of Council Regulation (EU) No 1024/2013*, financial holding companies and mixed financial holding companies shall be considered as credit institutions*.** **(*) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).’**

<u>Explanation</u>

Regulation (EU) No 1024/2013 confers on the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions (Article 1). To this end, the ECB must exercise specific tasks in relation to all credit institutions, such as carrying out supervision on a consolidated basis over credit institutions' parent companies established in one of the participating Member States, including over financial holding companies and mixed financial holding companies (Article 4(1)(g)). For the purpose of carrying out its tasks, the ECB has specific powers to require any credit institution, financial holding company or mixed financial holding company to take the necessary measures at an early stage to address relevant problems in specific circumstances (Article 16(1)).

In light of the ECB's supervisory responsibilities set out above, it is necessary to align the ECB's powers with respect to financial holding companies and mixed financial holding companies as much as possible with the proposed inclusion of financial holding companies and mixed financial holding companies in the prudential framework. In general, the new regime should allow for the particular characteristics of a financial holding or mixed financial holding company and its role within a group to be sufficiently taken into account, in order to avoid excessive impediments to the group's functioning.

The drafting suggestion aims to clarify that as regards financial holding companies or mixed financial holding companies that are part of a significant group as defined in Article 2(22), (20) and (21) and Article 40 of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17)[8], the ECB has the tasks and powers set out in Regulation (EU) No 1024/2013, including the authorisation of financial holding companies and mixed financial holding companies and the monitoring of their compliance with prudential requirements set out in the CRR and the CRD.

8 Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

<table>
<tr><th>Text proposed by the European Commission or current text of the CRR</th><th>Amendments proposed by the ECB[7]</th></tr>
<tr><td colspan="2">The proposed amendment should allow the ECB to continue to carry out effective supervision of credit institutions on a consolidated basis.</td></tr>
<tr><td colspan="2">Amendment 3
Article 4(1)(16a) of the CRR (new)</td></tr>
<tr><td>No text</td><td>‘(16a) “joint venture” means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement. Joint control requires a contractually agreed sharing of control of an arrangement, which exists only when decisions concerning the relevant activities require the unanimous consent of the parties sharing control;’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The new point defines joint ventures.</td></tr>
<tr><td colspan="2">Amendment 4
Article 4(1)(35a) of the CRR (new)</td></tr>
<tr><td>No text</td><td>‘(35a) “merger” means an operation whereby:
(a) one or more companies, on being dissolved without going into liquidation, transfer all of their assets and liabilities to another company, the acquiring company, in exchange for the issue to their members of securities or shares representing the capital of that other company;
(b) two or more companies, on being dissolved without going into liquidation, transfer all of their assets and liabilities to a company that they form, the new company, in exchange for the issue to their members of securities or shares representing the capital of that new company; or
(c) a company, on being dissolved without</td></tr>
</table>

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
	going into liquidation, transfers all of its assets and liabilities to the company holding all of the securities or shares representing its capital;'
<u>*Explanation*</u> *The proposed definition of mergers is inspired by the definition contained in Directive 2005/56/EC of the European Parliament and of the Council[9].*	
Amendment 5 Article 4(1)(145) of the CRR (new)	
No text	**'(145) "related party" means either a natural person or a close member of that person's family or a legal person that is related to an institution;'**
<u>*Explanation*</u> *This is consistent with the anticipated EBA guidelines on the same topic.*	
Amendment 6 Article 4(1)(146) of the CRR (new)	
No text	**'(146) "securities financing transactions" means securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365 of the European Parliament and of the Council*;** **(*) Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1).'**

9 Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies (OJ L 310, 25.11.2005, p. 1).

<table>
<tr><th>Text proposed by the European Commission or current text of the CRR</th><th>Amendments proposed by the ECB[7]</th></tr>
<tr><td colspan="2"><u>Explanation</u>
Please see the proposed amendment to Article 382(2) of the CRR.</td></tr>
<tr><td colspan="2">Amendment 7
Point (10) of Article 1 of the proposed regulation
(Article 18(4) of the CRR)</td></tr>
<tr><td>‘4. The consolidating supervisor shall require the proportional consolidation according to the share of capital held of participations in institutions and financial institutions managed by an undertaking included in the consolidation together with one or more undertakings not included in the consolidation, where the liability of those undertakings is limited to the share of the capital they hold.’</td><td>‘4. The consolidating supervisor shall require the proportional consolidation according to the share of capital held of participations in ~~institutions and financial institutions~~ joint ventures, which are institutions or financial institutions and which are managed by an undertaking included in the consolidation together with one or more undertakings not included in the consolidation, where the liability of those undertakings is limited to the share of the capital they hold.’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The reference to institutions and financial institutions needs to be kept so that only that type of joint venture is consolidated.</td></tr>
<tr><td colspan="2">Amendment 8
Article 34 of the CRR</td></tr>
<tr><td>‘Institutions shall apply the requirements of Article 105 to all their assets measured at fair value when calculating the amount of their own funds and shall deduct from Common Equity Tier 1 capital the amount of any additional value adjustments necessary.’</td><td>‘Institutions shall apply the requirements of Article 105 to all their assets and liabilities measured at fair value when calculating the amount of their own funds and shall deduct from Common Equity Tier 1 capital the amount of any additional value adjustments necessary.’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
International Accounting Standard 39 and the incoming International Financial Reporting Standard 9 (IFRS 9) allows the measurement at fair value of liabilities outside the trading book; these liabilities can also be subject to fair value adjustments which should also be reflected in Article 34 of the CRR.</td></tr>
</table>

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
Amendment 9 Article 35 of the CRR	
'Except in the case of the items referred to in Article 33, institutions shall not make adjustments to remove from their own funds unrealised gains or losses on their assets or liabilities measured at fair value.'	**'1.** Except in the case of the items referred to in Article 33, institutions shall not make adjustments to remove from their own funds unrealised gains or losses on their assets or liabilities measured at fair value. **2. Institutions shall remove from their own funds unrealised gains on their assets or liabilities measured at fair value as referred to in paragraph 3.** **3. The EBA shall develop draft regulatory technical standards to specify the conditions in accordance with which the requirements shall be applied for the purposes of paragraph 1.** **The EBA shall submit those draft regulatory technical standards to the Commission by […].** **Power is delegated to the Commission to adopt the regulatory technical standards in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.'**
<u>*Explanation*</u> *As proposed by the technical advice of the EBA to the Commission, ECB staff considers that prudential filters on unrealised gains should be re-introduced. It is therefore suggested that reference is made to that technical advice concerning how such filters should be designed (scope, method of application, etc.).*	
Amendment 10 Article 49(1) and Article 49(1a) (new) of the CRR	
'1. For the purposes of calculating own funds on an individual basis, a sub-consolidated basis and a consolidated basis, where the competent authorities require or permit institutions to apply method 1, 2 or 3 of Annex I to Directive 2002/87/EC, the competent authorities may permit institutions not to deduct the holdings of own funds	'1. For the purposes of calculating own funds on an individual basis, a sub-consolidated basis and a consolidated basis, where the competent authorities require or permit institutions to apply method 1, 2 or 3 of Annex I to Directive 2002/87/EC, the competent authorities may permit institutions ~~not to deduct~~ **to limit the deduction of**

<table>
<tr><th>Text proposed by the European Commission or current text of the CRR</th><th>Amendments proposed by the ECB[7]</th></tr>
<tr><td>instruments of a financial sector entity in which the parent institution, parent financial holding company or parent mixed financial holding company or institution has a significant investment, provided that the conditions laid down in points (a) to (e) of this paragraph are met:
[…]'</td><td>the holdings of own funds instruments of a financial sector entity in which the parent institution, parent financial holding company or parent mixed financial holding company or institution has a significant investment, to the amount specified in paragraph 1a provided that the conditions laid down in points (a) to (e) of this paragraph are met:
[…]
1a. For the purposes of paragraph 1, an institution shall determine the portion to be deducted by multiplying the amount specified in point (a) by the amount specified in point (b):
(a) the minimum amount of eligible own funds required to cover the solvency capital requirement, as calculated in accordance with Directive 2009/138/EC;
(b) the own funds instruments of the financial sector entity referred to in paragraph 1 in which the parent institution, parent financial holding company or parent mixed financial holding company or institution has a significant investment held by the institution expressed as a percentage of all eligible own funds items of the financial sector entity.'</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The deduction of the insurance capital requirement from the bank own funds would avoid the undesirable incentive to capitalise the insurance subsidiary at the minimum level, as the bank would no longer be penalised by the surplus of own funds at the level of the insurance subsidiary. This method would allow for better comparability between banks than the full deduction, avoiding that banks artificially show higher levels of solvency.</td></tr>
<tr><td colspan="2">Amendment 11
Point (32) of Article 1 of the proposed regulation
(Article 77 of the CRR)</td></tr>
<tr><td>'An institution shall obtain the prior permission of</td><td>'1. An institution shall obtain the prior permission of</td></tr>
</table>

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
the competent authority to do either or both of the following: (a) reduce, redeem or repurchase Common Equity Tier 1 instruments issued by the institution in a manner that is permitted under applicable national law; (b) effect the call, redemption, repayment or repurchase of Additional Tier 1, Tier 2 or eligible liabilities instruments as applicable, prior to the date of their contractual maturity.'	the competent authority to do **any** ~~either or both~~ of the following: (a) reduce, redeem or repurchase Common Equity Tier 1 instruments issued by the institution in a manner that is permitted under applicable national law; (b) effect the call, redemption, repayment or repurchase of Additional Tier 1, Tier 2 or eligible liabilities instruments as applicable, prior to the date of their contractual maturity**;**. **(c) reduce, distribute, or reclassify into other items of own funds the share premium accounts related to qualifying instruments of own funds.** **2. An institution shall obtain the prior permission of the resolution authority to do either or both of the following:** **(a) effect the call, redemption, repayment or repurchase of eligible liabilities instruments that are not covered by paragraph 1, prior to the date of their contractual maturity;** **(b) effect the call, redemption, repayment or repurchase of instruments with a residual maturity below one year that previously qualified as eligible liabilities instruments and that are not covered by paragraph 1, where the institution on an individual basis or the resolution group of which the institution is a subsidiary on a consolidated basis, as applicable, does not comply with the minimum requirement for own funds and eligible liabilities.** **3. The competent authorities may substitute the prior permission requirement in paragraph 1 by a notification requirement if the reduction of the Common Equity Tier 1 capital, Additional Tier 1**

Text proposed by the European Commission or current text of the CRR	**Amendments proposed by the ECB**[7]
	capital and Tier 2 capital as applicable is immaterial.'
<u>*Explanation*</u> *The new paragraph 1(c) requires banks to seek for the competent authority permission before reducing the share premium accounts in line with EBA Q&A 2016_2808. Paragraph 3 introduces the possibility of setting a de minimis threshold.* *The new paragraph 2 provides the resolution authority with approval powers for the early redemption of eligible liabilities instruments and extends the approval requirement for early redemption to instruments that no longer qualify as eligible liabilities due to their remaining maturity being below one year where the institution or resolution group is in breach of its requirement concerning eligible liabilities. This provision aims to minimise the further reduction of bail-in-able liabilities in a situation where an institution or resolution entity is in breach of the MREL requirement.* *See also the technical working document ECB staff drafting proposals on revisions to the Union crisis management framework*[10].	
Amendment 12 Point (42) of Article 1 of the proposed regulation (Article 99(4) and (7) of the CRR)	
'[…] 4. The reports required in accordance with paragraphs 1 to 3 shall be submitted on an annual basis by small institutions as defined in Article 430a and, subject to paragraph 6, semi-annually or more frequently by all other institutions. […] 7. EBA shall assess the financial impact on institutions of Commission Implementing Regulation (EU) No 680/2014 in terms of compliance costs and report its findings to the Commission by no later than [31 December 2019]. That report shall in particular examine whether reporting requirements have been applied in a sufficiently proportionate manner. For those	'[…] 4. The reports required in accordance with paragraphs 1 to 3 shall be submitted~~ on an annual basis by small institutions as defined in Article 430a and, subject to paragraph 6, semi-annually~~ **quarterly** or more frequently~~ by all other institutions~~. […] 7. EBA shall assess the financial impact on institutions of Commission Implementing Regulation (EU) No 680/2014 in terms of compliance costs and **supervisory benefits. The assessment shall focus on the incremental changes arising from Basel III. The EBA shall** report its findings to the Commission by no later

10 Available on the ECB's website at www.ecb.europa.eu.

<table>
<tr><th>Text proposed by the European Commission or current text of the CRR</th><th>Amendments proposed by the ECB[7]</th></tr>
<tr><td>purposes, the report shall:
[…]'</td><td>than [31 December 2019]. That report shall in particular examine whether reporting requirements have been applied in a sufficiently proportionate manner. For those purposes, the report shall:
[…]'</td></tr>
<tr><td colspan="2"><u>Explanation</u>

Concerning the reporting obligations of banks ECB staff supports in general a proportional approach for smaller and simpler banks in the sense that they should be subject to simplified requirements in some cases, in accordance with their size, complexity and riskiness.

However, ECB staff does not agree with the proposed reduction in the frequency of reporting by small institutions. The current reporting requirements already include materiality thresholds leading to subsequent reductions in the amount of data to be provided. If reduced further in terms of frequency, supervision of smaller institutions would become inefficient. By reducing the reporting scope and frequency, the Commission would act in an unsustainable manner. Also, it is reasonable to assume that NCAs will reintroduce national reporting schemes to compensate for missing or insufficient Union regulation, which would distort the harmonisation process and the single market.

Moreover, a reduction in the frequency of reporting, although reducing compliance costs for smaller credit institutions from a human resources perspective, would be unlikely to be less burdensome from an IT perspective since smaller institutions would still need to put appropriate IT systems in place, and the majority of these costs have already been incurred. Irrespective of the frequency of reporting these IT systems need to be maintained on an ongoing basis.

Rather than reducing the frequency of reporting, amending the scope of reporting for smaller institutions could be considered instead. However, any decision in this regard should only be taken after the EBA has assessed the financial impact on institutions of Regulation (EU) No 680/2014[11] in terms of compliance costs and supervisory benefits.</td></tr>
<tr><td colspan="2">Amendment 13
Point (45) of the proposed regulation
(Article 101(5) of the CRR)</td></tr>
<tr><td>'5. By way of derogation from paragraph 1, small institutions as defined in Article 430a shall report the information referred to in paragraph 1 on an</td><td>'~~5. By way of derogation from paragraph 1, small institutions as defined in Article 430a shall report the information referred to in paragraph 1 on an~~</td></tr>
</table>

[11] Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, p. 1).

<table>
<tr><th>Text proposed by the European Commission or current text of the CRR</th><th>Amendments proposed by the ECB[7]</th></tr>
<tr><td>annual basis.’</td><td>~~annual basis.~~’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
From a supervisory standpoint it is not appropriate to reduce the reporting frequency further (see also the explanation for the proposed amendment to Article 99 of the CRR).</td></tr>
<tr><td colspan="2">Amendment 14
Point (49) of Article 1 of the proposed regulation
(Article 104a(1) of the CRR)</td></tr>
<tr><td>‘1. Institutions shall have in place clearly defined policies for identifying which exceptional circumstances justify the re-classification of a trading book position as a non-trading book position or conversely a non-trading book position as a non-trading book for the purposes of determining their own funds requirements to the satisfaction of the competent authorities. The institutions shall review these policies at least annually.

EBA shall develop guidelines by [two years after the entry into force of this Regulation] on the meaning of exceptional circumstances for the purpose of this Article.’</td><td>‘1. Institutions shall have in place clearly defined policies for identifying which exceptional circumstances justify the re-classification of a trading book position as a non-trading book position or conversely a non-trading book position as a ~~non-~~trading book **position** for the purposes of determining their own funds requirements to the satisfaction of the competent authorities. The institutions shall review these policies at least annually.

Exceptional circumstances may include the permanent closure of trading desks, requiring termination of the business activity applicable to the instrument or portfolio or a change in accounting standards that allows an item to be fair valued through the profit and loss (P&L). Market events, changes in the liquidity of a financial instrument, or a change of trading intent alone are not valid reasons for re-designating an instrument to a different book.

~~The EBA shall develop guidelines by [two years after the entry into force of this Regulation] on the meaning on exceptional circumstances for the purpose of this Article.~~’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
Instead of guidelines ECB staff recommends taking over the requirements listed in paragraph 27 of the fundamental review of the trading book (FRTB) to further specify the ‘exceptional circumstances in which</td></tr>
</table>

<table>
<tr><th>Text proposed by the European Commission or current text of the CRR</th><th>Amendments proposed by the ECB[7]</th></tr>
<tr><td colspan="2">competent authorities may permit a reclassification between books' directly in the Level 1 text.</td></tr>
<tr><td colspan="2">Amendment 15
Point (49) of Article 1 of the proposed regulation
(Article 104a(2) and (5) of the CRR)</td></tr>
<tr><td>'2. Competent authorities shall grant permission to re-classify a trading book position as a non-trading book position or conversely a non-trading book position as a trading book position for the purposes of determining their own funds requirements only where the institution has provided the competent authorities with written evidence that its decision to re-classify that position is the result of an exceptional circumstance that is consistent with the policies set out by the institution in accordance with paragraph 1. For that purpose, the institution shall provide sufficient evidence that the position no longer meets the condition to be classified as a trading book or non-trading book positions pursuant to Article 104.
[…]
5. The re-classification of a position in accordance with this article shall be irrevocable.'</td><td>'2. Apart from re-classifications directly enforced under Article 104, <s>C</s>competent authorities shall grant permission to re-classify a trading book position as a non-trading book position or conversely a non-trading book position as a trading book position for the purposes of determining their own funds requirements only where the institution has provided the competent authorities with written evidence that its decision to re-classify that position is the result of an exceptional circumstance that is consistent with the policies set out by the institution in accordance with paragraph 1. For that purpose, the institution shall provide sufficient evidence that the position no longer meets the condition to be classified as a trading book or non-trading book positions pursuant to Article 104.
[…]
5. The re-classification of a position in accordance with this article apart from re-classifications directly enforced under Article 104, shall be irrevocable.'</td></tr>
<tr><td colspan="2"><u>Explanation</u>
ECB staff recommends introducing slight changes to clarify that this treatment applies only to re-classifications at the choice of the institutions and not those forced by the trading book/banking book boundary rules (e.g. a collective investment undertaking must move to the banking book if look-through is no longer possible and must move back to the trading book if look-through is possible again).</td></tr>
</table>

Text proposed by the European Commission or current text of the CRR	**Amendments proposed by the ECB[7]**
Amendment 16 Point (49) of Article 1 of the proposed regulation (Article 104b(4) of the CRR)	
‘4. By way of derogation from paragraph 1, institutions using the approaches set out in points (a) and (c) of Article 325(1) to determine the own funds requirements for market risk may apply for a waiver for part or all of the requirements set out in this Article. Competent authorities may grant the waiver where the institution demonstrates that: […]’	‘4. By way of derogation from paragraph 1, institutions using **solely** the approaches set out in points (a) and (c) of Article 325(1) to determine the own funds requirements for market risk may apply for a waiver for part or all of the requirements set out in this Article. Competent authorities may grant the waiver where the institution demonstrates that: […]’
<u>*Explanation*</u> *The current drafting of the proposal does not unambiguously specify whether this waiver only applies to institutions which solely use the (simplified) standardised approach or whether it is also possible for institutions to utilise the internal model permission to some desks and apply for a ‘desk waiver‘ for the rest of their market risk portfolio. Indeed ECB staff is of the view that only institutions which are solely applying the standardised approach/simplified standardised approach (SA/SSA) should be allowed to make use of the waiver.*	
Amendment 17 Article 162(2)(b), (c), (d), (g), (h) and (i) of the CRR	
‘[…] (b) for derivatives subject to a master netting agreement, M shall be the weighted average remaining maturity of the exposure, where M shall be at least 1 year, and the notional amount of each exposure shall be used for weighting the maturity; (c) for exposures arising from fully or nearly-fully collateralised derivative instruments listed in Annex II and fully or nearly- fully collateralised margin lending transactions which are subject to a master netting agreement, M shall be the weighted average remaining maturity of the transactions where M shall be at least 10 days;	‘[…] (b) for derivatives subject to a master netting agreement, **and to the extent that they are not covered by points (c), (g) or (i),** M shall be the weighted average remaining maturity of the exposure, where M shall be at least 1 year, and the notional amount of each exposure shall be used for weighting the maturity; (c) for exposures arising from fully or nearly-fully collateralised derivative instruments listed in Annex II ~~and fully or nearly fully collateralised margin lending transactions~~ which are subject to a master netting agreement **and to the extent that they are not covered by point (g)**, M shall be the weighted

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
(d) for repurchase transactions or securities or commodities lending or borrowing transactions which are subject to a master netting agreement, M shall be the weighted average remaining maturity of the transactions where M shall be at least five days. The notional amount of each transaction shall be used for weighting the maturity; […] (g) for institutions using the Internal Model Method set out in Section 6 of Chapter 6 to calculate the exposure values, M shall be calculated for exposures to which they apply this method and for which the maturity of the longest-dated contract contained in the netting set is greater than one year according to the following formula: […] (h) an institution that uses an internal model to calculate a one- sided credit valuation adjustment (CVA) may use, subject to the permission of the competent authorities, the effective credit duration estimated by the internal model as M. Subject to paragraph 2, for netting sets in which all contracts have an original maturity of less than one year the formula in point (a) shall apply; (i) for institutions using the Internal Model Method set out in Section 6 of Chapter 6, to calculate the exposure values and having an internal model permission for specific risk associated with traded debt positions in accordance with Part Three, Title IV, Chapter 5, M shall be set to 1 in the formula laid out in Article 153(1), provided that an institution can demonstrate to the competent authorities that its internal model for Specific risk associated with traded debt positions applied in Article 383 contains effects of rating migrations; […]'	average remaining maturity of the transactions where M shall be at least 10 days; (d) for repurchase transactions or securities or commodities lending or borrowing transactions **and margin lending transactions** which are subject to a master netting agreement **and to the extent that they are not covered by point (g),** M shall be the weighted average remaining maturity of the transactions where M shall be at least five days. The notional amount of each transaction shall be used for weighting the maturity**. For open term transactions for which the institution always has the right to terminate the transaction, M shall be the higher of five business days and the average lifetime of the relevant transaction types in the last two years**; […] (g) for institutions using the Internal Model Method set out in Section 6 of Chapter 6 to calculate the exposure values, M shall be calculated for exposures to which they apply this method and for which the maturity of the longest-dated contract contained in the netting set is greater than one year**, and where the conditions in point (i) to set M to 1 do not apply,** in accordance with the following formula: […] ~~(h) an institution that uses an internal model to calculate a one- sided credit valuation adjustment (CVA) may use, subject to the permission of the competent authorities, the effective credit duration estimated by the internal model as M.~~ ~~Subject to paragraph 2, for netting sets in which all contracts have an original maturity of less than one year the formula in point (a) shall apply;~~ (i) for institutions using the Internal Model Method

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
	set out in Section 6 of Chapter 6 **and where the maturity of the longest-dated contract contained in the netting set is greater than one year**, to calculate the exposure values and having an internal model permission for specific risk associated with traded debt positions in accordance with Part Three, Title IV, Chapter 5, M shall be set to 1 in the formula laid out in Article 153(1), provided that an institution can demonstrate to the competent authorities that its internal model for specific risk associated with traded debt positions applied in Article 383 contains effects of rating migrations. […]’

<u>Explanation</u>

Point (b) is revised with the result that margined derivatives are covered by point (c), and derivatives under an internal model method (IMM) are covered by point (g) with an own M treatment.

Point (c) is revised with the result that margin lending is covered by point (d), where the five days apply in accordance with Article 285(2) of Regulation (EU) No 575/2013, which deals with the securities financing transaction (SFTs) margin period of risk. Derivatives under an IMM are covered by point (g).

Point (d) is revised with the result that margin lending is added, as this is always treated the same way as repos and securities/commodities lending elsewhere in the Regulation. As a broader question of consistency, it should be considered whether margin lending transactions that are not collateralised have the same risk profile as securities financing transactions – whether they should be treated in the same way across the Regulation.

Point (g) is revised to avoid contradiction with point (i). A number of SFTs (e.g. open term repos) has no specified maturity and banks treated those very differently in the past.

Point (h) is revised because there are internal models for credit valuation adjustment CVA on balance sheets as sometimes approved by accountants/external auditors, which can differ quite a lot. An internal model for the CVA pillar 1 charge is just that for advanced CVA (A-CVA) in Article 384. It is not clear whether the current wording refers to CVA or to a CVA capital requirement. Effective credit duration is not currently defined and this leads to risk-weighted asset (RWA) variation. Past experience in onsite investigations indicates that the scenario provided for in point (h) has not been used thus far.

Subparagraph (i) is revised since M=1 is not justified by rating migrations if the longest maturity is less than one year.

Text proposed by the European Commission or current text of the CRR	**Amendments proposed by the ECB**[7]
Amendment 18 Article 162(3) of the CRR	
'3. Where the documentation requires daily re-margining and daily revaluation and includes provisions that allow for the prompt liquidation or set off of collateral in the event of default or failure to remargin, M shall be at least one-day for: (a) fully or nearly-fully collateralised derivative instruments listed in Annex II; (b) fully or nearly-fully collateralised margin lending transactions; (c) repurchase transactions, securities or commodities lending or borrowing transactions. […]'	'3. Where the documentation requires daily re-margining and daily revaluation and includes provisions that allow for the prompt liquidation or set off of collateral in the event of default or failure to re-margin, M shall be at least ~~one-day for~~ **5 business days for nearly or fully collateralised repurchase transactions, securities or commodities lending or borrowing transactions, or margin lending transactions. Where no prompt liquidation is possible within five business days, the maximum M is given by the method described in paragraph 2(d).** ~~(a) fully or nearly-fully collateralised derivative instruments listed in Annex II;~~ ~~(b) fully or nearly-fully collateralised margin lending transactions;~~ ~~(c) repurchase transactions, securities or commodities lending or borrowing transactions.~~ […]'
<u>*Explanation*</u> *Margined derivatives are already covered by paragraph 2(c). Even for 'prompt liquidation', a closeout of just one day is deemed impossible and contradicts the concept of a margin period of risk. The same is true for SFTs, where the shortest possible liquidation is also given by the margin period of risk. Margin lending is treated like other SFTs in consistent agreement with other parts of the CRR.*	
Amendment 19 Article 272(3) of the CRR	
'(3) 'margin lending transactions' means transactions in which an institution extends credit in connection with the purchase, sale, carrying or trading of securities. Margin lending transactions do not include other loans that are secured by	'(3) "margin lending transactions" means transactions in which an institution extends credit ~~in connection with~~ **to cover** the purchase, sale, carrying or trading of securities. Margin lending transactions do not include ~~other~~ loans that are

<table>
<tr><th>Text proposed by the European Commission or current text of the CRR</th><th>Amendments proposed by the ECB[7]</th></tr>
<tr><td>collateral in the form of securities;’</td><td>secured by collateral in the form of securities;’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
This amendment provides a clarification of the definition, since ‘connection’ is relatively vague; the new wording makes the purpose of margin lending more transparent.</td></tr>
<tr><td colspan="2">Amendment 20
Point (63)(a) of Article 1 of the proposed regulation
(Article 273(1) of the CRR)</td></tr>
<tr><td>‘1. […]
Institutions shall calculate the exposure value for the contracts listed in Annex II on the basis of one of the methods set out in Sections 3 to 6 of this Chapter in accordance with this Article.
An institution which does not meet the conditions set out in Article 273a (2) shall not use the method set out in Section 4 of this Chapter. An institution which does not meet the conditions set out in Article 273a (3) shall not use the method set out in Section 5 of this Chapter.
To determine the exposure value for the contracts listed in point 3 of Annex II an institution shall not use the method set out in Section 5 of this Chapter.
Institutions may use in combination the methods set out in Sections 3 to 6 of this Chapter on a permanent basis within a group. A single institution shall not use in combination the methods set out in Sections 3 to 6 of this Chapter on a permanent basis.
[...]’</td><td>‘1. […]
Institutions shall calculate the exposure value for the contracts listed in Annex II on the basis of one of the methods set out in Sections 3 to 6 of this Chapter in accordance with this Article.
An institution which does not meet the conditions set out in Article 273a (2) shall not use the method set out in Section 4 of this Chapter. An institution which does not meet the conditions set out in Article 273a (3) shall not use the method set out in Section 5 of this Chapter.
To determine the exposure value for the contracts listed in point 3 of Annex II an institution shall not use the method set out in Section 5 of this Chapter.
Institutions may use in combination the methods set out in Section 3 to 6 of this Chapter on a permanent basis within a group. A single institution requires the approval of the competent authority for using ~~shall not use~~ in combination the methods set out in Section 3 and Section 6 of this Chapter on a permanent basis. A single institution shall not use in combination the methods set out in Section 4 and Section 5 of this Chapter on a permanent basis.
[...]’</td></tr>
</table>

<table>
<tr><th>Text proposed by the European Commission or current text of the CRR</th><th>Amendments proposed by the ECB[7]</th></tr>
<tr><td colspan="2">

<u>Explanation</u>

The first amendment allows for the permanent partial use for single institutions as is possible for other risk types and thus aligns the treatment of counterparty credit risk in a way which is consistent with the rest of the CRR (see, for example Article 150 regarding credit risk). The second amendment requires a single standardised approach for those transactions that are not covered by the IMM (Section 6).

</td></tr>
<tr><td colspan="2">

Amendment 21

Point (65) of Article 1 of the proposed regulation

(Article 279a(1)(a) of the CRR)

</td></tr>
<tr><td>

[…]

Where:

$sign = \begin{cases} -1, \text{where the transaction is a put option} \\ +1, \text{where the transaction is a call option} \end{cases}$

$type = \begin{cases} -1, \text{where the transaction is a bought option} \\ +1, \text{where the transaction is a call option} \end{cases}$

</td><td>

[…]

Where:

$sign = \begin{cases} -1, \text{where the transaction is a } \mathbf{sold\ call\ option\ or\ a\ bought} \text{ put option} \\ +1, \text{where the transaction is a } \mathbf{bought} \text{ call } \mathbf{or\ sold\ put} \text{ option} \end{cases}$

$type = \begin{cases} -1, \text{where the transaction is a } \sout{\text{bought}}\ \mathbf{put} \text{ option} \\ +1, \text{where the transaction is a call option} \end{cases}$

</td></tr>
<tr><td colspan="2">

<u>Explanation</u>

These changes are mathematically correct and in line with the original BCBS proposals in 'The standardised approach for measuring counterparty credit risk exposures[12]'.

</td></tr>
<tr><td colspan="2">

Amendment 22

Point (65) of the proposed regulation

(Article 280 of the CRR)

</td></tr>
<tr><td>

'For the purposes of calculating the add-on of a hedging set as referred to in Articles 280a to 280f, the hedging set supervisory factor coefficient 'ϵ' shall be the following:

∊ = for the hedging set established in accordance with Article 275(1),

∊ = for the hedging set established in accordance with point (a) of Article 275(2),

</td><td>

'For the purposes of calculating the add-on of a hedging set as referred to in Articles 280a to 280f, the hedging set supervisory factor coefficient 'ϵ' shall be the following:

∊ = for the hedging set established in accordance with ~~275(1)~~**Article 277a(1),**

∊ = for the hedging set established in accordance with point (a) of ~~275(2)~~**Article 277a(2),**

</td></tr>
</table>

12 Available at:www.bis.org.

Text proposed by the European Commission or current text of the CRR	**Amendments proposed by the ECB**[7]
∊ = for the hedging set established in accordance with point (b) of Article 275(2).'	∊ = for the hedging set established in accordance with point (b) of Article ~~275(2)~~**277a(2).'**
<u>Explanation</u> *The references have been corrected.*	
Amendment 23 Article 283(6a) and (6b) of the CRR (new)	
No text	**'6a. Material changes and extensions to the use of internal models for which the institution has received permission require a separate permission by the competent authority.** **Institutions shall notify the competent authorities of all other extensions and changes to the use of those internal models for which the institution has received permission.** **6b. The EBA shall develop draft regulatory technical standards to specify the following:** **(a) the conditions for assessing materiality of extensions and changes to the use of internal models;** **(b) the assessment methodology in accordance with which competent authorities review applications for permission to use internal models;** **The EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2017.** **Power is delegated to the Commission to adopt the regulatory technical standards in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.'**
<u>Explanation</u> *It should be noted that no single element of existing RTS on materiality criteria for model changes and extensions for market and credit risk also applies to the exposure methodology for counterparty risk.*	

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
Paragraph 6a introduces material changes to the IMM. Paragraph 6b mandates the EBA to work on materiality criteria for model changes and extensions, and assessment criteria for IMM investigations. *There is no reason why counterparty credit risk should be treated differently in this regard from all other risk types.*	
Amendment 24 Article 284(6) of the CRR	
'6. Effective EPE is the average Effective EE during the first year of future exposure. If all contracts in the netting set mature within less than one year, EPE shall be the average of EE until all contracts in the netting set mature. Effective EPE shall be calculated as a weighted average of Effective EE: $EffectiveEPE = \sum_{k=1}^{min(1year,maturity)} EffectiveEE_{t_k} \cdot \Delta t_k$, where the weights $\Delta t_k = t_k - t_{k-1}$ allow for the case when future exposure is calculated at dates that are not equally spaced over time.'	'6. Effective EPE is the average Effective EE during the first year of future exposure. If all contracts in the netting set mature within less than one year, EPE shall be the average of EE until all contracts in the netting set mature. Effective EPE shall be calculated as a weighted average of Effective EE: ~~$EffectiveEPE = \sum_{k=1}^{min(1year,maturity)} EffectiveEE_{t_k} \cdot \Delta t_k$,~~ $EffectiveEPE = \frac{\mathbf{1}}{\boldsymbol{T}} \cdot \sum_{k=1}^{\boldsymbol{T}} EffectiveEE_{t_k} \cdot \Delta t_k$, where the weights $\Delta t_k = t_k - t_{k-1}$ allow for the case when future exposure is calculated at dates that are not equally spaced over time**, with the last grid point t_n = T, which is the lesser between one year and the time when all contracts in the netting set mature**.'
<u>*Explanation*</u> *The formula in the proposed amendment applies for both the case where the longest maturity in the netting set is less than one year and where it is more than one year. This formula leads to incorrect results in cases where the longest maturity in the netting set is less than one year, because the Δtk are not normalised.* *For example, where the longest maturity is six months = ½ year, the Δtk add up to 0.5. With the current formula, capital requirements are half of what they should be given a proper normalisation. The proposed formula therefore suggests dividing by half a year to ensure correct averaging.*	
Amendment 25 Article 292(5) of the CRR	
'5. To evaluate the effectiveness of its stress	~~'5. To evaluate the effectiveness of its stress~~

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
calibration for EEPE, an institution shall create several benchmark portfolios that are vulnerable to the main risk factors to which the institution is exposed. The exposure to these benchmark portfolios shall be calculated using (a) a stress methodology, based on current market values and model parameters calibrated to stressed market conditions, and (b) the exposure generated during the stress period, but applying the method set out in this Section (end of stress period market value, volatilities, and correlations from the 3-year stress period). The competent authorities shall require an institution to adjust the stress calibration if the exposures of those benchmark portfolios deviate substantially from each other.'	~~calibration for EEPE, an institution shall create several benchmark portfolios that are vulnerable to the main risk factors to which the institution is exposed. The exposure to these benchmark portfolios shall be calculated using (a) a stress methodology, based on current market values and model parameters calibrated to stressed market conditions, and (b) the exposure generated during the stress period, but applying the method set out in this Section (end of stress period market value, volatilities, and correlations from the 3-year stress period).~~ ~~The competent authorities shall require an institution to adjust the stress calibration if the exposures of those benchmark portfolios deviate substantially from each other.'~~
Explanation *In the opinion of ECB staff, this paragraph could create significant interpretational issues, relating to arbitrary benchmark portfolio constructions applying artificial exposure calculations that were not related at all to the requirements of paragraphs 2 and 3, under which the institution needs to demonstrate 'that the stress period used for the calculation under this paragraph coincides with a period of increased credit default swap or other credit (such as loan or corporate bond) spreads for a representative selection of its counterparties with traded credit spreads'.* *Once the period is identified (to the satisfaction of the supervisor), the stress calibration of the real life portfolio runs automatically.* *In short, paragraphs 2 and 3 evidently contradict paragraph 5, meaning that any adjustment of the calibration in accordance with the last sentence of paragraph 5 would immediately contradict the requirements of paragraphs 2 and 3.*	
Amendment 26 Article 294(1) of the CRR	
'1. […] (l) an institution shall regularly test the pricing models used to calculate counterparty exposure against appropriate independent benchmarks as	'1. […] (l) an institution shall regularly test the pricing models used to calculate counterparty exposure against appropriate independent benchmarks as

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
part of the on-going model validation process; […] (o) the initial and on-going validation of CCR exposure models shall assess whether or not the counterparty level and netting set exposure calculations of exposure are appropriate.'	part of the on-going model validation process **which shall include at least a comparison with front office pricing models**; […] (o) the initial and on-going validation of CCR exposure models shall assess whether or not the counterparty level and netting set exposure calculations of exposure are appropriate~~.~~**;** **(p) the granularity of the time steps at which the exposure is calculated shall be assessed at least on a yearly basis in terms of their ability to resolve exposure changing effects of trade-related cash flows like swap coupons and cash settlement of maturing transactions;** **(q) the number of scenarios used to calculate the exposure value shall be assessed at least on a yearly basis in terms of convergence of exposure values at institution level.'**

Explanation

Point (l) is revised since differences in front office pricing were identified as a source of RWA variation at Union level and in Standards Implementation Trading Book Subgroup (SIGTB) studies.

Point (p) is added since a too inflexible (or always fixed) setting of time steps underestimates exposure especially for paid trade-related cash flows; in particular in the case of margined trading.

Point (q) is added since too few scenarios have been identified as a source of RWA variation at Union level and in SIGTB studies. The exposure value might be underestimated in the case of too few scenarios.

Amendment 27

Article 316(1) of the CRR

'1. For institutions applying accounting standards established by Directive 86/635/EEC, based on the accounting categories for the profit and loss account of institutions under Article 27 of that Directive, the relevant indicator is the sum of the elements listed in Table 1 of this paragraph.	'1. For institutions applying accounting standards established by Directive 86/635/EEC, based on the accounting categories for the profit and loss account of institutions under Article 27 of that Directive, the relevant indicator is the sum of the elements listed in Table 1 of this paragraph.

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
Institutions shall include each element in the sum with its positive or negative sign. Table 1 1 Interest receivable and similar income 2 Interest payable and similar charges 3 Income from shares and other variable/fixed-yield securities 4 Commissions/fees receivable 5 Commissions/fees payable 6 Net profit or net loss on financial operations 7 Other operating income […]’	Institutions shall include each element in the sum with its positive or negative sign. Table 1 1 Interest receivable and similar income 2 Interest payable and similar charges **3 Financial and operating lease income and profits from leased assets** **4 Financial and operating lease expenses, losses from leased assets, depreciation and impairment of operating leased assets** ~~3~~**5** Income from shares and other variable/fixed-yield securities ~~4~~**6** Commissions/fees receivable ~~5~~**7** Commissions/fees payable ~~6~~**8** Net profit or net loss on financial operations ~~7~~**9** Other operating income […]’

Explanation

The Level 1 text should be clarified and amended in the light of the ongoing BCBS work with regard to the standardised measurement approach.

In the current text, for financial activities such as (i) credit transactions (elements 1 and 2 of Table 1); (ii) commission business (elements 4 and 5 of Table 1); and (iii) financial operations (element 6 of Table 1), income and expenses are offset against each other. Element 7 of Table 1, ‘other operating income’, under which operating lease income is usually reported is included in the calculation of the relevant indicator, however operating lease expenses are excluded as ‘other operating expenses’ are not considered in the calculation of the relevant indicator.

Consequently there is an inconsistent treatment of leasing compared with credit: business models based on credit finance, financial leasing or operating leasing employ similar administrative and management processes, and thus face similar operational risks. Therefore, the contributions to the relevant indicator of the income and expenses from financial and operating lease should be consistent with the contribution of credit finance, irrespective of their accounting treatment.

To guarantee consistency of treatment across banks and jurisdictions, all financial and operating lease income and expenses – including depreciation/impairment of the leased assets and gains/losses from the selling of leased assets – should be netted.

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
Amendment 28 Point (83) of Article 1 of the proposed regulation (Article 325(3) of the CRR)	
'3. An institution may use in combination the approaches set out in points (a) and (b) of paragraph 1 on a permanent basis within a group provided that the own funds requirements for market risks calculated under the approach set out in point (a) does not exceed 90% of the total own funds requirements for market risks. Otherwise, the institution shall use the approach set out in point (a) of paragraph 1 for all the positions subject to the own funds requirements for market risks.'	'3. An institution may use in combination the approaches set out in points (a) and (b) of paragraph 1 on a permanent basis within a group provided that the own funds requirements for market risks calculated under the approach set out in point (a) does not exceed 90% of the total own funds requirements for market risks. Otherwise, the institution shall use the approach set out in point (a) of paragraph 1 for all the positions subject to the own funds requirements for market risks. **The competent authority may, based on the approach chosen by the institution for comparable desks, decide to nominate desks to fall within the scope of the approach set out in paragraph 1(b).'**
Explanation *The FRTB requirement 'banks must not nominate desks to be out-of-scope due to standardised approach capital charges being less than the modelled requirements' should be transposed into the Regulation to avoid obvious regulatory arbitrage and allow for supervisory action in this regard.*	
Amendment 29 Point (83) of Article 1 of the proposed regulation (Article 325(8) of the CRR)	
'8. EBA shall develop regulatory technical standards to specify in more detail how institutions shall determine the own funds requirements for market risks for non-trading book positions subject to foreign exchange risk or commodity risk in accordance with the approaches set out in points (a) and (b) of paragraph 1.	8. EBA shall develop regulatory technical standards to specify in more detail how institutions shall determine the own funds requirements for market risks for non-trading book positions subject to foreign exchange risk or commodity risk in accordance with the approaches set out in points (a) and (b) of paragraph 1.

<table>
<tr><th>Text proposed by the European Commission or current text of the CRR</th><th>Amendments proposed by the ECB[7]</th></tr>
<tr><td>EBA shall submit those draft regulatory technical standards to the Commission by [6 months after the entry into force of this Regulation].
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with article 10 to 14 of Regulation (EU) No 1093/2010.’</td><td>EBA shall submit those draft regulatory technical standards to the Commission by [~~6 months~~ three years after the entry into force of this Regulation].
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with article 10 to 14 of Regulation (EU) No 1093/2010.’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
In general, the methodology for risk and profit and loss (P&L) calculation is the same for the trading book and the banking book. Furthermore, the FRTB does not trigger any new problems with regard to banking book risk or P&L calculation compared to the current market risk framework.
Hence, ECB staff would propose extending the deadline for the submission of this RTS so that the focus is on the early finalisation of such RTS since these are new concepts and important to banks’ FRTB implementation.</td></tr>
<tr><td colspan="2">Amendment 30
Point (83) of Article 1 of the proposed regulation
(Article 325a(2) of the CRR)</td></tr>
<tr><td>‘(a) all the positions assigned to the trading book shall be included, except credit derivatives that are recognised as internal hedges against non-trading book credit risk exposures;’</td><td>‘(a) all the positions assigned to the trading book shall be included~~, except credit derivatives that are recognised as internal hedges against non-trading book credit risk exposures~~;’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The exclusion of credit derivatives recognised as internal hedges against non-trading book credit risk exposures appears to be both unclear and unjustified. There is no reason to exclude only credit derivatives, and not also equity or interest rate derivatives, for example. Furthermore, if these trading book legs of internal trades are excluded why are the external hedges offsetting these internal hedges included? Hence, ECB staff would propose the inclusion of all positions. If an institution is very active in the area of internal trades, it might not be safe to assume that it qualifies for the simplified standardised approach.</td></tr>
</table>

<table>
<tr><th>Text proposed by the European Commission or current text of the CRR</th><th>Amendments proposed by the ECB[7]</th></tr>
<tr><td colspan="2">Amendment 31
Point (83) of Article 1 of the proposed regulation
(Article 325c(1) of the CRR)</td></tr>
<tr><td>‘1. Any position which an institution has deliberately taken in order to hedge against the adverse effect of foreign exchange rates on its ratios referred to in Article 92(1) may, subject to permission of the competent authorities, be excluded from the calculation of own funds requirements for market risks, provided the following conditions are met:
[…]’</td><td>‘1. The competent authorities may permit an institution to exclude certain foreign exchange risk <s>Any </s>positions which an institution has deliberately taken in order to hedge against the adverse effect of foreign exchange rates on its ratios referred to in Article 92(1), <s>may, subject to permission by the competent authorities, be excluded </s>from the calculation of own funds requirements for market risks, provided the following conditions are met:
[…]’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
Structural hedges of foreign exchange risk and their exemption from capital charges may have quite a substantial impact.
Practices vary and the topic is generally acknowledged to be unclear. Therefore, a strong alignment of practices with the FRTB and clarity are of high importance.
The proposed wording is aligned with paragraph 4 of the FRTB, which states that ‘Supervisory authorities are free to allow banks to protect their capital adequacy ratio in this way and exclude certain currency risk positions from the calculation of net open currency risk positions…’.</td></tr>
<tr><td colspan="2">Amendment 32
Point (84) of Article 1 of the proposed regulation
(Article 325i(4) and (5) of the CRR)</td></tr>
<tr><td>‘4. The final delta, vega or curvature own fund requirements, shall be the largest of the three scenario-specific own fund requirements for delta, vega or curvature risk calculated in accordance with paragraph
5. The sensitivities-based method own fund requirement shall be the sum of the three final delta, vega and curvature own funds requirements.’</td><td>‘4. For each scenario, the institutions must determine the scenario-related portfolio level own funds requirement as the simple sum of delta, vega and curvature own fund requirements for that scenario.
<s>The final delta, vega or curvature own fund requirements, shall be the largest of the three scenario-specific own fund requirements for delta,</s></td></tr>
</table>

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
	~~vega or curvature risk calculated in accordance with paragraph~~ 5. **The final sensitivities-based method own fund requirement shall be the largest of the three scenario-related portfolio level own funds requirements.'** ~~The sensitivities-based method own fund requirement shall be the sum of the three final delta, vega and curvature own funds requirements.'~~

<u>*Explanation*</u>

The final sensitivity-based approach (SBA) charge should consistently be based on the most conservative of the three scenarios. As a result the final SBA charge should be:

max(Delta OFR(Scenario 1) + Vega OFR(Scenario 1) + Curvature OFR(Scenario1);

Delta OFR(Scenario 2) + Vega OFR(Scenario 2) + Curvature OFR(Scenario2);

Delta OFR(Scenario 3) + Vega OFR(Scenario 3) + Curvature OFR(Scenario 3))

as is also proposed in paragraph 55 of the FRTB, instead of:

max(Delta OFR(Scenario 1); Delta OFR(Scenario 2); Delta OFR(Scenario 3)) +

max(Vega OFR(Scenario 1); Vega OFR(Scenario 2); Vega OFR(Scenario 3)) +

max(Curvature OFR(Scenario 1); Curvature OFR(Scenario 2); Curvature OFR(Scenario 3))

as is proposed in the Commission's proposal.

Amendment 33

Point (84) of Article 1 of the proposed regulation

(Article 325v(2) and (5) of the CRR)

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB
'2. Instruments are exposed to residual risks where they meet any of the following conditions: (a) the instrument references an exotic underlying; (b) the instrument bears other residual risks. […] 5. EBA shall develop draft regulatory technical standards to specify in more details what is an exotic underlying and which instruments are exposed to other residual risks for the purpose of	'2. Instruments are exposed to residual risks where they meet any of the following conditions: (a) the instrument references an exotic underlying. **Instruments with an exotic underlying are trading book instruments with an underlying exposure that is not in the scope of the delta, vega or curvature risk treatments under the sensitivities-based method laid down in Section 2 or the default risk charge laid down in Section 5.**

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
paragraph 2. When developing those draft regulatory technical standards, EBA shall take the following elements into account: (d) Exotic underlying shall include exposures that are not in the scope of the delta, vega or curvature risk treatments under the sensitivities-based method laid down in Section 2 or the default risk charge laid down in Section 5. EBA shall at least examine whether longevity risk, weather, natural disasters and future realised volatility should be considered as exotic underlying exposures. (e) When defining which instruments are exposed to other residual risks, EBA shall at least examine instruments that meet any of the following criteria: (i) An instrument is subject to vega and curvature risk own funds requirements in the sensitivities based method laid down in Section 2 and generates pay-offs that cannot be replicated as a finite linear combination of plain-vanilla options; (ii) An instrument is a securitisation position that belongs to the CTP, as referred to in Article 104(7) to (9). Non-securitisation hedges that belong to the CTP shall not be considered. EBA shall submit those draft regulatory technical standards to the Commission by [fifteen months after the entry into force of this Regulation] Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with article 10 to 14 of Regulation (EU) No 1093/2010.’	**Exotic underlying exposures include: longevity risk, weather, natural disasters and future realised volatility (as an underlying exposure for a swap).** (b) the instrument bears other residual risks. **Instruments bearing other residual risks are those that meet the following criteria:** **(i) An instrument is subject to vega and curvature risk own funds requirements in the sensitivities-based method laid down in Section 2 and generates pay-offs that cannot be replicated as a finite linear combination of plain-vanilla options with a single underlying equity price, commodity price, exchange rate, bond price, credit default swap (CDS) price or interest rate swap; or** **(ii) An instrument is a securitisation position that belongs to the correlation trading portfolio (CTP), as referred to in Article 104(7) to (9). Non-securitisation hedges that belong to the CTP shall not be considered.** […] 5. EBA shall develop draft regulatory technical standards to specify in more details what is an exotic underlying and which instruments are exposed to other residual risks for the purpose of paragraph 2. ~~When developing those draft regulatory technical standards, EBA shall take the following elements into account:~~ ~~(d) Exotic underlying shall include exposures that are not in the scope of the delta, vega or curvauture risk tretaments under the sensitivities-based method laid down in Section 2 or the default risk charge laid down in Section 5. EBA shall at least examine whether longevity risk, weather,~~

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
	~~natural disasters and future realised volatility should be considered as exotic underlying exposures.~~ ~~(e) When defining which instruments are exposed to other residual risks, EBA shall at least examine instruments that meet any of the following criteria:~~ ~~(i) An instrument is subject to vega and curvature risk own funds requirements in the sensitivities based method laid down in Section 2 and generates pay-offs that cannot be replicated as a finite linear combination of plain-vanilla options;~~ ~~(ii) An instrument is a securitisation position that belongs to the CTP, as referred to in Article 104(7) to (9). Non-securitisation hedges that belong to the CTP shall not be considered.~~ EBA shall submit those draft regulatory technical standards to the Commission by [fifteen months after the entry into force of this Regulation] Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with article 10 to 14 of Regulation (EU) No 1093/2010.’
Explanation *Core FRTB principles should be directly transposed into Level 1 text. Hence, ECB staff proposes to make use of points (d) and (e) in paragraph 58 of the FRTB to further specify residual risk add-on charge instruments in the Level 1 text.*	
Amendment 34 Point (84) of Article 1 of the proposed regulation (Article 325ba(1) of the CRR)	
‘1. After having verified institutions' compliance with the requirements set out in Articles 325bi to 325bk, competent authorities shall grant permission to institutions to calculate their own funds requirements by using their internal models in	‘1. ~~After having verified institutions' compliance with the requirements set out in Articles 325bi to 325bk,~~ ~~c~~Competent authorities shall grant permission to institutions to calculate their own funds requirements by using their internal models in

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
accordance with Article 325bb for the portfolio of all positions attributed to trading desks that fulfil the following requirements: (a) the trading desks have been established in accordance with Article 104b; (b) the trading desks have met the Profit&Loss attribution ('P&L attribution') requirement set out in Article 325bh for the immediately preceding 12 months; (c) the trading desks have met the back-testing requirements referred to in Article 325bg(1) for the immediately preceding 250 business days; (d) for trading desks that have been assigned at least one of those trading book positions referred to in Article 325bm, the trading desks fulfil the requirements set out in Article 325bn for the internal default risk model.’	accordance with Article 325bb for the portfolio of all positions attributed to trading desks that fulfil the following requirements: (a) the trading desks have been established in accordance with Article 104b; (b) the trading desks have met the Profit&Loss attribution (“~~'~~P&L attribution~~'~~”) requirement set out in Article 325bh for the immediately preceding 12 months; (c) the trading desks have met the back-testing requirements referred to in Article 325bg(1) for the immediately preceding 250 business days; (d) **the trading desks fulfil the requirements set out in Article 325bi to 325bk;** **(e)** for trading desks that have been assigned at least one of those trading book positions referred to in Article 325bm, the trading desks fulfil the requirements set out in Article 325bn for the internal default risk model.’

Explanation

Default risk charge (DRC) and expected shortfall (ES) should be treated in the same manner. If the ES or DRC requirements applicable to desks are not fulfilled, the desk positions should be capitalised according to the standardised approach (SA). The current drafting of Article 325ba(1) only allows this for the DRC, whereas for the ES the internal models approach (IMA) requirements must be met on an overall level.

Amendment 35

Point (84) of Article 1 of the proposed regulation

(Article 325ba(2) of the CRR)

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB
‘Institutions that have been granted the permission referred to in paragraph 1 to use their internal models for each trading desk shall report to the competent authorities as follows: (b) the monthly own funds requirements for market risks calculated in accordance with Chapter 1a of	‘Institutions that have been granted the permission referred to in paragraph 1 to use their internal models for **one or more** ~~each~~ trading desk**s** shall report to the competent authorities as follows: (b) **for each desk for which this permission has been granted,** the monthly own funds

<table>
<tr><th>Text proposed by the European Commission or current text of the CRR</th><th>Amendments proposed by the ECB[7]</th></tr>
<tr><td>this Title as if the institution not been granted the permission referred to in paragraph 1 and with all the positions attributed to the trading desk considered on a standalone basis as a separate portfolio. These calculations shall be reported to the competent authorities on a monthly basis.'</td><td>requirements for market risks calculated in accordance with Chapter 1a of this Title as if the institution not been granted the permission referred to in paragraph 1 and with all the positions attributed to the trading desk considered on a standalone basis as a separate portfolio.

(c) the monthly own funds requirements for market risks calculated in accordance with Chapter 1a of this Title applied to the whole set of positions of the institution subject to market risk requirements.

These calculations shall be reported to the competent authorities on a monthly basis.'</td></tr>
<tr><td colspan="2"><u>Explanation</u>

Paragraph 45 of the FRTB requires the calculation of the standardised approach not only at a desk-by-desk level, but also at the institution-wide level for banks using IMA. This calculation (and subsequent reporting) is necessary for the standardised approach to satisfactorily play the role of a fallback and a benchmark for internal models.</td></tr>
<tr><td colspan="2">Amendment 36
Point (84) of Article 1 of the proposed regulation
(Article 325ba(9) of the CRR)</td></tr>
<tr><td>'9. EBA shall develop draft regulatory technical standards to specify in greater detail the extraordinary circumstances under which competent authorities may permit an institution to continue using its internal models for the purpose of calculating the own fund requirements for market risks of a trading desk that no longer meets the conditions referred to in points (b) or (c) of paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by [six months after the entry into force of this Regulation]

Power is delegated to the Commission to adopt the</td><td>'<s>9. EBA shall develop draft regulatory technical standards to specify in greater detail the extraordinary circumstances under which competent authorities may permit an institution to continue using its internal models for the purpose of calculating the own fund requirements for market risks of a trading desk that no longer meets the conditions referred to in points (b) or (c) of paragraph 1.</s>

<s>EBA shall submit those draft regulatory technical standards to the Commission by [six months after the entry into force of this Regulation]</s>

<s>Power is delegated to the Commission to adopt the</s></td></tr>
</table>

Text proposed by the European Commission or current text of the CRR	**Amendments proposed by the ECB**[7]
regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.'	~~regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.~~'
<u>Explanation</u> *The EBA will receive notifications if competent authorities allow institutions to keep an internal model approval after failed backtesting or P&L attribution tests (Article 325ba(4) of the proposed amendments to the CRR). This is deemed to be sufficient in the first stage - if needed, EBA guidelines could be written at a later stage, however the elaboration of such guidelines has a lower priority than other mandates for RTS/guidelines.*	
Amendment 37 Point (84) of Article 1 of the proposed regulation (Article 325be(7) of the CRR)	
'7. EBA shall develop draft regulatory technical standards to specify in greater detail: (a) how institutions shall map trading book positions to broad risk factors categories and broad risk factor subcategories for the purpose of paragraph 1; (b) the currencies that constitute the most liquid currencies subcategory in the interest rate broad risk factor category of Table 2; (c) the currency pairs that constitute the most liquid currency pairs subcategory in the foreign exchange broad risk factor category of Table 2; (d) the definition of a small and large capitalisation for the equity price and volatility subcategory in the equity broad risk factor category of Table 2; EBA shall submit those draft regulatory technical standards to the Commission by [six months after the entry into force of this Regulation]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.	'7. EBA shall develop draft regulatory technical standards to specify in greater detail: (a) how institutions shall map trading book positions to broad risk factors categories and broad risk factor subcategories for the purpose of paragraph 1; (b) the currencies that constitute the most liquid currencies subcategory in the interest rate broad risk factor category of Table 2; (c) the currency pairs that constitute the most liquid currency pairs subcategory in the foreign exchange broad risk factor category of Table 2~~;~~**.** ~~(d) the definition of a small and large capitalisation for the equity price and volatility subcategory in the equity broad risk factor category of Table 2;~~ EBA shall submit those draft regulatory technical standards to the Commission by [six months after the entry into force of this Regulation]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

<table>
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<tr><td>[…]’</td><td>[…]

8. Large capitalisation for the equity price and volatility subcategory in the equity broad risk factor category is defined as a market capitalisation equal to or greater than EUR 2 billion and small capitalisation is defined as a market capitalisation of less than EUR 2 billion.’</td></tr>
<tr><td colspan="2">

<u>*Explanation*</u>

Only where necessary should technical standards be drafted, based on a precise mandate, to complement Level 1 legislation. In relation to point (d) of Article 325be(7) of the Commission’s proposal ECB staff does not see the need for an RTS, but proposes to use the definition of ‘large market cap’ laid down in paragraph 104 of the FRTB.

</td></tr>
<tr><td colspan="2">Amendment 38
Point (84) of Article 1 of the proposed regulation
(Article 325be(7) of the CRR)</td></tr>
<tr><td>

‘Table 2

[…]

<table>
<tr><td rowspan="8">Credit spread</td><td>Central government, including central banks, of Member States of the Union</td><td>2</td><td>20</td></tr>
<tr><td>Covered bonds issued by credit institutions established in Member States of the Union (Investment Grade)</td><td>2</td><td>20</td></tr>
<tr><td>Sovereign (Investment Grade)</td><td>2</td><td>20</td></tr>
<tr><td>Sovereign (High Yield)</td><td>3</td><td>40</td></tr>
<tr><td>Corporate (Investment Grade)</td><td>3</td><td>40</td></tr>
<tr><td>Corporate (High Yield)</td><td>4</td><td>60</td></tr>
<tr><td>Volatility</td><td>5</td><td>120</td></tr>
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</table>

[…]’

</td><td>

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</table>

[…]’

</td></tr>
</table>

<table>
<tr><th>Text proposed by the European Commission or current text of the CRR</th><th>Amendments proposed by the ECB[7]</th></tr>
<tr><td colspan="2"><u>Explanation</u>
There is not sufficient evidence that it is adequate to use the same (low) liquidity horizon for investment grade (IG) covered bonds as for central government bonds of Union Member States. Hence, ECB staff proposes that the Basel Liquidity Horizon of 40 days be maintained for covered bonds and considers that, compared to IG corporate bonds, their reduced risk is sufficiently reflected in the market data used to calibrate the internal market risk model.</td></tr>
<tr><td colspan="2">Amendment 39
Point (84) of Article 1 of the proposed regulation
(Article 325bf(2)(c) of the CRR)</td></tr>
<tr><td>‘(c) there is a clear and apparent relationship between the value of the risk factor and each verifiable price identified by the institution in accordance with point (a).’</td><td>‘(c) there is a clear and apparent relationship between the value of the risk factor and each verifiable price identified by the institution in accordance with point (a), which means that any verifiable price that is observed for a transaction should be counted as an observation for all of the risk factors concerned (i.e. all risk factors used to model the risk of the instrument that is bought, sold or generated through the transaction).’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
ECB staff recommends defining precisely what is meant by a ‘clear and apparent relationship’ – paragraph 183 of the FRTB contains a good definition which ECB staff proposes to include.</td></tr>
<tr><td colspan="2">Amendment 40
Point (84) of Article 1 of the proposed regulation
(Article 325bf(9) of the CRR)</td></tr>
<tr><td>‘9. Institutions shall consider risk factors derived from a combination of modellable and non-modellable risk factors as non-modellable.’</td><td>‘9. Institutions shall consider risk factors derived from a combination of modellable and non-modellable risk factors as non-modellable.
Institutions may add modellable risk factors, and replace non-modellable risk factors by a basis between these additional modellable risk factors and these non-modellable risk factors.</td></tr>
</table>

<table>
<tr><th>Text proposed by the European Commission or current text of the CRR</th><th>Amendments proposed by the ECB[7]</th></tr>
<tr><td></td><td>This basis will then be considered as a non-modellable risk factor.’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
Footnote 40 to the FRTB is not explicitly reflected in the CRR. ECB staff proposes to include it as it would provide additional clarity.</td></tr>
<tr><td colspan="2">Amendment 41
Point (84) of Article 1 of the proposed regulation
(Article 325bg(2) of the CRR)</td></tr>
<tr><td>‘[…]
(b) scenarios of future shocks shall apply to the risk factors of the trading desk's positions referred to in Article 325bh(3) and which are considered modellable in accordance with Article 325bf;
(c) data inputs used to determine the scenarios of future shocks applied to the modellable risk factors shall be calibrated to historical data from the preceding 12-months period. Those data shall be updated at least on a monthly basis;
[…]’</td><td>‘[…]
(b) scenarios of future shocks shall apply to the risk factors of the trading desk's positions <s>referred to in Article 325bh(3) and </s>which are considered modellable in accordance with Article 325bf;
(c) data inputs used to determine the scenarios of future shocks applied to the modellable risk factors shall be calibrated <s>to historical data from the preceding 12-months period. Those data shall be updated at least on a monthly basis</s> in accordance with Article 325bd(4)(c);
[…]’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The backtesting value at risk (VaR) at desk level should be based on exactly the same risk factors – evidently only those relevant for the desk – such as the top-of-the-house ES model.
Additionally, the backtesting VaR at desk level should be based on exactly the same data input – evidently only the data input relevant for the desk – such as the top-of-the-house ES model (e.g. it should be avoided that the data inputs used to determine the scenarios for future shocks applied to the modellable risk factors for ES are only updated monthly while those for the backtesting VaR are updated on a daily basis).</td></tr>
</table>

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
Amendment 42 Point (84) of Article 1 of the proposed regulation (Article 325bg(5)(a) of the CRR)	
‘(a) an overshooting shall be a one-day change in the portfolio's value that exceeds the related value-at-risk number calculated by the institution's internal model in accordance with the following : (i) a one-day holding period; (ii) a 99th percentile, one tailed confidence interval; (iii) scenarios of future shocks shall apply to the risk factors of the trading desks' positions referred to in Article 325bh(3) and which are considered modellable in accordance with Article 325bf; (iv) data inputs used to determine the scenarios of future shocks applied to the modellable risk factors shall be calibrated to historical data from the preceding 12-months period. Those data shall be updated on at least a monthly basis; (v) unless stated otherwise in this Article, the institution's internal model shall be based on the same modelling assumptions as those used for the calculation of the expected shortfall risk measure referred to in point (a) of Article 325bb(1);’	‘(a) an overshooting shall be a one-day change in the portfolio's value that exceeds the related value-at-risk number calculated by the institution's internal model in accordance with the following : (i) a one-day holding period; (ii) a 99th percentile, one tailed confidence interval; (iii) scenarios of future shocks shall apply to the risk factors of the trading desks' positions ~~referred to in Article 325bh(3) and~~ which are considered modellable in accordance with Article 325bf; (iv) data inputs used to determine the scenarios of future shocks applied to the modellable risk factors shall be calibrated ~~to historical data from the preceding 12-months period. Those data shall be updated on at least a monthly basis~~ **in accordance with Article 325bd(4)(c)**; (v) unless stated otherwise in this Article, the institution's internal model shall be based on the same modelling assumptions as those used for the calculation of the expected shortfall risk measure referred to in point (a) of Article 325bb(1);’
<u>*Explanation*</u> *The top-of-the-house backtesting VaR should be based on exactly the same risk factors as the top-of-the-house ES model.* *Additionally, the backtesting VaR should be based on exactly the same data input as the top-of-the-house ES model (e.g. it should be avoided that the data input used to determine the scenarios for future shocks applied to the modellable risk factors for ES are only updated monthly while those for the backtesting VaR are updated on a daily basis).*	

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
Amendment 43 Point (84) of Article 1 of the proposed regulation (Article 325bg(6) of the CRR)	
‘6. Competent authorities may limit the add-on to that resulting from overshootings under back-testing hypothetical changes where the number of overshootings under back-testing actual changes does not result from deficiencies in the internal model.’	‘~~6. Competent authorities may limit the add-on to that resulting from overshootings under back-testing hypothetical changes where the number of overshootings under back-testing actual changes does not result from deficiencies in the internal model.~~’
Explanation *Based on EBA benchmarking studies and BCBS studies several drivers of unwanted RWA variation were identified in the current market risk framework. RWA variation not only resulted from modelling freedom but also from supervisory discretion. As a result quantitative standards/tests should apply without the possibility of derogation.*	
Amendment 44 Point (84) of Article 1 of the proposed regulation (Article 325bh(2) of the CRR)	
‘2. The P&L attribution requirement shall ensure that the theoretical changes in a trading desk portfolio's value, based on the institution's risk-measurement model, are sufficiently close to the hypothetical changes in the trading desk portfolio's value, based on the institution's pricing model.’	**‘2. The P&L attribution compares two types of P&L time series, the hypothetical P&L according to Article 325bg(3)(a) and the risk-theoretical P&L. The risk-theoretical P&L is defined as the daily desk-level P&L that is predicted by the risk management model conditional on a realisation of all relevant risk factors that enter the model.** The P&L attribution requirement shall ensure that the ~~theoretical changes in a trading desk portfolio's value, based on the institution's risk-measurement model, are sufficiently close to the hypothetical changes in the trading desk portfolio's value, based on the institution's pricing model.~~ **risk management model at the trading desk level provides a reasonably accurate assessment of the risks of a trading desk and thus shall**

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
	ensure that there is a significant degree of association between a desk's hypothetical and risk-theoretical P&L.'
Explanation *ECB staff is of the view that the P&L attribution test should not be limited to differences in pricing functions between risk controlling and front office but should also take into account any differences in risk factor coverage.*	
Amendment 45 Point (84) of Article 1 of the proposed regulation (Article 325bh(3) and (4) of the CRR)	
'3. An institution's compliance with the P&L attribution requirement shall lead, for each position in a given trading desk, to the identification of a precise list of risk factors that are deemed appropriate for verifying the institution's compliance with the backtesting requirement set out in Article 325bg. 4. EBA shall develop draft regulatory technical standards to further specify: (a) in light of international regulatory developments, the technical criteria that shall ensure that the theoretical changes in a trading desk portfolio's value is sufficiently close to the hypothetical changes in the trading desk portfolio's value for the purposes of paragraph 2; (b) the technical elements that shall be included in the theoretical and hypothetical changes in a trading desk portfolio's value for the purpose of this Article. EBA shall submit those draft regulatory technical standards to the Commission by [six months after the entry into force of this Regulation]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the	'3. ~~An institution's compliance with the P&L attribution requirement shall lead, for each position in a given trading desk, to the identification of a precise list of risk factors that are deemed appropriate for verifying the institution's compliance with the backtesting requirement set out in Article 325bg.~~ **Banks shall calculate and report to their competent authority, the risk-theoretical and hypothetical P&L for each trading desk in internal model scope on a regular basis. Furthermore they shall ensure that there is a significant degree of association between a desk's hypothetical and risk-theoretical P&L such that:** **(a) the correlation between hypothetical and risk-theoretical P&L is significant; and** **(b) the unexplained P&L (i.e., hypothetical P&L minus risk-theoretical P&L) and its variance is on average close to zero.** 4. EBA shall develop draft regulatory technical standards to further specify: (a) in **the** light of international regulatory developments, **and taking into account the**

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.’	**results from the monitoring of desks’ hypothetical and risk-theoretical P&L, the final definition of the P&L attribution test** ~~the technical criteria that shall ensure that the theoretical changes in a trading desk portfolio's value is sufficiently close to the hypothetical changes in the trading desk portfolio's value~~ for the purposes of paragraph 2; (b) **The exact definition of risk-theoretical P&L of a trading desk’s portfolio for the purpose of this Article.** ~~the technical elements that shall be included in the theoretical and hypothetical changes in a trading desk portfolio's value for the purpose of this Article.~~ EBA shall submit those draft regulatory technical standards to the Commission by [six months after the entry into force of this Regulation]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.’

Explanation

ECB staff proposes to include the current P&L attribution requirements as a monitoring instrument. The idea behind the P&L attribution requirements crucially influences banks’ implementation of the internal models approach and should not be left entirely unspecified during banks’ FRTB implementation phase. The proposed wording provides guidance to institutions regarding model requirements that they should pay attention to, whilst still leaving sufficient flexibility to define an appropriate final P&L attribution test taking into account the monitoring results and any developments at the international level.

Regarding the EBA’s mandate to define ‘the technical elements that shall be included in the hypothetical changes in a trading desk portfolio's value’, the hypothetical P&L to be used in the P&L attribution test should be the same as that used in backtesting, which is already addressed in the RTS in Article 325bg(9).

Text proposed by the European Commission or current text of the CRR	**Amendments proposed by the ECB[7]**
Amendment 46 Point (84) of Article 1 of the proposed regulation (Article 325bj(1)(b) of the CRR)	
‘(b) an institution shall have a risk control unit that is independent from business trading units and that reports directly to senior management. That unit shall be responsible for designing and implementing any internal risk-measurement model. That unit shall conduct the initial and on-going validation of any internal model used for purposes of this Chapter and shall be responsible for the overall risk management system. That unit shall produce and analyse daily reports on the output of any internal model used to calculate capital requirements for market risks, and on the appropriateness of measures to be taken in terms of trading limits;’	‘(b) an institution shall have a risk control unit that is independent from business trading units and reports directly to senior management. That unit shall be responsible for designing and implementing any internal risk-measurement model. That unit, **or an organisationally separate validation function,** shall conduct the initial and on-going validation of any internal model used for purposes of this Chapter**.** ~~and shall be~~ **The unit shall be** responsible for the overall risk management system. That unit shall produce and analyse daily reports on the output of any internal model used for calculating capital requirements for market risks, and on the appropriateness of measures to be taken in terms of trading limits;’
<u>Explanation</u> *With regard to the establishment of an independent validation function, it should be made clear that the validation function may be organisationally separate from the risk control unit as this would be the set-up with the clearest segregation of duties between model development and validation.*	
Amendment 47 Point (84) of Article 1 of the proposed regulation (Article 325bj(2)(h) of the CRR)	
‘(h) where the review is performed by a third-party undertaking in accordance to point (h) of paragraph 1, the verification that the internal validation process set out in Article 325bk fulfils its objectives.’	‘(h) ~~where the review is performed by a third-party undertaking in accordance to point (h) of paragraph 1,~~ the verification that the internal validation process set out in Article 325bk fulfils its objectives.’

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
<u>Explanation</u> *While ECB staff agrees that requirement (h) is an important one, it should not only apply to the outsourced third party review process, but to any independent review.*	
Amendment 48 Point (84) of Article 1 of the proposed regulation (Article 325bl(3) and (4) of the CRR)	
‘3. Institutions shall determine to the satisfaction of competent authorities appropriate extreme scenarios of future shock for all the modellable risk-factors. 4. EBA shall develop draft regulatory technical standards to specify in greater details: (a) how institutions shall determine the extreme scenario of future shock applicable to non-modellable risk factors and how they shall apply that extreme scenario of future shock to those risk factors; (b) a regulatory extreme scenario of future shock for each broad risk factor subcategory listed in Table 2 of Article 325be which institutions may use when they cannot determine an extreme scenario of future shock in accordance with point (a), or which competent authorities may require the institution to apply when those authorities are not satisfied with the extreme scenario of future shock determined by the institution. In developing those draft regulatory technical standards, EBA shall take into consideration that the level of own funds requirements for market risk of a non-modellable risk factor as set out in this Article shall be as high as the level of own funds requirements for market risks that would be calculated under this Chapter were this risk factor modellable.	‘3. Institutions shall determine to the satisfaction of competent authorities appropriate extreme scenarios of future shock for all the **non-**modellable risk-factors. **If an institution cannot provide an extreme scenario which satisfies the competent authorities, it shall use the maximum possible loss of the positions depending on the non-modellable risk factor.** 4. EBA shall develop draft regulatory technical standards to specify in greater details~~:~~ ~~(a)~~ how institutions shall determine the extreme scenario of future shock applicable to non-modellable risk factors and how they shall apply that extreme scenario of future shock to those risk factors~~;~~. ~~(b) a regulatory extreme scenario of future shock for each broad risk factor subcategory listed in Table 2 of Article 325be which institutions may use when they cannot determine an extreme scenario of future shock in accordance with point (a), or which competent authorities may require the institution to apply when those authorities are not satisfied with the extreme scenario of future shock determined by the institution.~~ In developing those draft regulatory technical standards, EBA shall take into consideration that the level of own funds requirements for market risk of a non-modellable risk factor as set out in this

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
EBA shall submit those draft regulatory technical standards to the Commission by [six months after the entry into force of this Regulation]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.'	Article shall be as high as the level of own funds requirements for market risks that would be calculated under this Chapter were this risk factor modellable. EBA shall submit those draft regulatory technical standards to the Commission by [six months after the entry into force of this Regulation]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.'
<u>*Explanation*</u> *Instead of aiming to specify regulatory extreme scenarios for risk factor categories in a RTS as referred to in Article 325bl(4)(b)) the proposed sentence should be added to Article 325bl(3).* *The specification in* Article 325bl(4)(b) *would have to be carried out for all non-modellable risk factors, which cannot be known. As a result it is only possible to make a reference to a general treatment. This might be a maximum loss as prescribed in Basel or something weaker with the risk that institutions will not have incentives to come up with an adequate extreme scenario. This risk could be avoided by the threat of a maximum possible loss scenario to be applied if the supervisor is not satisfied with the scenario provided by an institution.* *Furthermore, an extreme shock in a risk factor does not necessarily lead to an extreme loss in the positions that the risk factor is attributed to – this is rather dependent on the particular position and portfolio composition. This issue could also be resolved by having the maximum loss as a fallback solution instead of regulatory extreme shock scenarios on a risk factor subcategory level.*	
Amendment 49 Point (84) of Article 1 of the proposed regulation (Article 325bm(1) of the CRR)	
'1. All the institution's positions that have been attributed to trading desks for which the institution has been granted the permission referred to in Article 325ba(1) shall be subject to an own funds requirement for default risk where the positions contain at least one risk factor mapped to the broad risk categories 'equity' or 'credit spread' in	'1. All the institution's positions that have been attributed to trading desks for which the institution has been granted the permission referred to in Article 325ba(1) shall be subject to an own funds requirement for default risk where the positions contain at least one risk factor mapped to the broad risk categories 'equity' or 'credit spread' in

<table>
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<tr><td>accordance with Article 325be(1). That own funds requirement, which is incremental to the risks captured by the own funds requirements referred to in Article 325bb(1), shall be calculated with the institution's internal default risk model which shall comply with the requirements laid down in this Section.'</td><td>accordance with Article 325be(1), including defaulted debt positions. That own funds requirement, which is incremental to the risks captured by the own funds requirements referred to in Article 325bb(1), shall be calculated with the institution's internal default risk model which shall comply with the requirements laid down in this Section.'</td></tr>
<tr><td colspan="2"><u>Explanation</u>
ECB staff proposes clarifying that defaulted debt positions should be included in the DRC.</td></tr>
<tr><td colspan="2">Amendment 50
Point (84) of Article 1 of the proposed regulation
(Article 325bo(3) of the CRR)</td></tr>
<tr><td>'3. By way of derogation from points (a) and (c) of paragraph 1, an institution may replace the time horizon of one year by a time horizon of sixty days for the purpose of calculating the default risk of equity positions, in which case the calculation of default correlations between equity prices and default probabilities shall be consistent with a time horizon of sixty days and the calculation of default correlations between equity prices and bond prices shall be consistent with a time horizon of one year.'</td><td>'3. By way of derogation from points (a) and (c) of paragraph 1, an institution may replace the time horizon of one year by a time horizon of sixty days for the purpose of calculating the default risk of equity positions, in which case the calculation of <s>default correlations between equity prices and</s> default probabilities shall be consistent with a time horizon of sixty days and the calculation of default correlations between equity prices and bond prices shall be consistent with a time horizon of one year.'</td></tr>
<tr><td colspan="2"><u>Explanation</u>
A single time horizon is needed for the calculation of correlation if equities' default risk is modelled together with credit products' default risk such as bond default risk, since correlations are modelled between issuers who may be bond issuers or equity issuers or both.</td></tr>
<tr><td colspan="2">Amendment 51
Point (84) of Article 1 of the proposed regulation
(Article 325bq(1) of the CRR)</td></tr>
<tr><td>'1. The internal default risk model referred to in Article 325bn(1) shall be capable of modelling the</td><td>'1. The internal default risk model referred to in Article 325bn(1) shall be capable of modelling the</td></tr>
</table>

<table>
<tr><th>Text proposed by the European Commission or current text of the CRR</th><th>Amendments proposed by the ECB[7]</th></tr>
<tr><td>default of individual issuers as well as the simultaneous default of multiple issuers and take into account the impact of those defaults in the market values of the positions included in the scope of that model . For that purpose, the default of each individual issuer shall be modelled using at least two type of systematic risk factors and at least one idiosyncratic risk factor.’</td><td>default of individual issuers as well as the simultaneous default of multiple issuers and take into account the impact of those defaults in the market values of the positions included in the scope of that model. For that purpose, ~~the default of each individual issuer shall be modelled using at least two type of systematic risk factors and at least one idiosyncratic risk factor.~~ **institutions shall use a default simulation model with two types of systematic risk factors.’**</td></tr>
<tr><td colspan="2"><u>Explanation</u>
Based on EBA benchmarking studies and BCBS studies several drivers of RWA variation were identified in the current market risk framework. In developing the new market risk rules, namely the FRTB, these studies were taken into account and as a result modelling freedom was further restricted by the Basel Trading Book Group, which included explicitly restricting default simulation models to having only two types of systematic risk factors. Hence, ECB staff proposes to incorporate this restriction in the CRR.</td></tr>
<tr><td colspan="2">Amendment 52
Point (84) of Article 1 of the proposed regulation
(Article 325bq(12) of the CRR)</td></tr>
<tr><td>‘12. EBA shall develop draft regulatory technical standards to specify the requirements that have to be fulfilled by an institution's internal methodology or external sources for estimating default probabilities and loss given default in accordance with point (e) of paragraph 5 and point (d) of paragraph 6.
EBA shall submit those draft regulatory technical standards to the Commission by [15 months after the entry into force of this Regulation].
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.’</td><td>‘~~12. EBA shall develop draft regulatory technical standards to specify the requirements that have to be fulfilled by an institution's internal methodology or external sources for estimating default probabilities and loss given default in accordance with point (e) of paragraph 5 and point (d) of paragraph 6.~~
~~EBA shall submit those draft regulatory technical standards to the Commission by [15 months after the entry into force of this Regulation].~~
~~Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.~~’</td></tr>
</table>

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<tr><td colspan="2"><u>Explanation</u>
ECB staff proposes to delete paragraph 12 as it is already stated clearly in paragraphs 5(e) and 6(d) of Article 325bq that probabilities of default and loss given default must be computed using a methodology consistent with the internal ratings-based (IRB) methodology.</td></tr>
<tr><td colspan="2">Amendment 53
Article 382(2) of the CRR</td></tr>
<tr><td>‘2. An institution shall include securities financing transactions in the calculation of own funds required by paragraph 1 if the competent authority determines that the institution's CVA risk exposures arising from those transactions are material.’</td><td>‘2. An institution shall include securities financing transactions in the calculation of own funds required by paragraph 1 if the<s> competent authority determines that the institution's CVA risk exposures arising from those transactions are material</s> exposure value of securities financing transactions determined in accordance with Part Three, Title II, Chapters 4 and 6, respectively, is at least [5 %] of the sum of exposure values for counterparty credit risk in accordance with Part Three, Title II, Chapter 6 and for securities financing transactions in accordance with Part Three, Title II, Chapter 4.’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
To avoid different practices in institutions, a common threshold for including SFTs in the CVA risk RWA calculation should be included. ECB staff would propose 5 % as this is already a common materiality threshold for market risk model changes.
Furthermore, ECB staff considers that it might be useful to define the term ‘securities financing transactions’ in Article 4 of the CRR.</td></tr>
<tr><td colspan="2">Amendment 54
Article 383(1) of the CRR</td></tr>
<tr><td>‘1. An institution which has permission to use an internal model for the specific risk of debt instruments in accordance with point (d) of Article 363 (1) shall, for all transactions for which it has permission to use the IMM for determining the</td><td>‘1. An institution which has permission to use an internal model for the specific risk of debt instruments in accordance with point (d) of Article 363(1) shall, for all transactions for which it has permission to use the IMM for determining the</td></tr>
</table>

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
exposure value for the associated counterparty credit risk exposure in accordance with Article 283, determine the own funds requirements for CVA risk by modelling the impact of changes in the counterparties' credit spreads on the CVAs of all counterparties of those transactions, taking into account CVA hedges that are eligible in accordance with Article 386.’	exposure value for the associated counterparty credit risk exposure in accordance with Article 283, determine the own funds requirements for CVA risk by modelling the impact of changes in the counterparties' credit spreads on the CVAs of all counterparties of those transactions, taking into account CVA hedges that are eligible in accordance with Article 386 **subject to the approval of the competent authorities**.’
Explanation *The proposed amendment introduces an ‘approval of the competent authority’ requirement for the implementation of an A-CVA approach, as for any other internal model in the CRR. It should be noted that A-CVA is not the same as the Internal Model Method according to Article 283 of the CRR.* *The current treatment of a binding, automatic internal modelling requirement without any requirement for approval is an inconsistent exception within the CRR framework and does not take into account the modelling of peculiar CVA features, such as the credit risk proxy concept, which is not covered by market risk or IMM approvals.*	
Amendment 55 Article 383(7a), (7b) and (7c) of the CRR (new)	
No text	**‘7a. An institution which has permission to use an internal model for the specific risk of debt instruments in accordance with point (d) of Article 363(1) shall, for all transactions for which it has permission to use the IMM for determining the exposure value for the associated counterparty credit risk exposure in accordance with Article 283, request permission of the competent authority to determine its own funds requirements for credit valuation adjustment in accordance with this Article.** **Competent authorities shall only permit institutions to use the advanced method to calculate their own funds requirements for the credit valuation adjustment risk, as referred to**

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	in paragraph 1, only if the institution has demonstrated to the satisfaction of the competent authorities that: **(a) the systems for managing credit valuation adjustment risk maintained by the institution are sound and properly implemented to ensure compliance with the requirements of this Article;** **(b) the institution has in place a process for the initial and ongoing validation of the advanced method which is conducted by an independent validation unit. In particular, the institution shall define the frequency at which ongoing validation shall be conducted, the manner in which the validation is to be conducted with respect to data flows and portfolios and the nature of the quantitative and qualitative analyses to be used.** **7b. Material changes and extensions to the use of the advanced method, which the institution has received permission to use, shall only be valid once they have received a separate permission from the competent authority.** **Institutions shall notify the competent authorities of all other extensions and changes to the use of the advanced method that the institution has received permission to use.** **7c. The EBA shall develop draft regulatory technical standards to specify the following:** **(a) the conditions for assessing the materiality of extensions and changes to the use of the advanced method;** **(b) the assessment methodology according to which the competent authorities may permit institutions to use the advanced method;** **The EBA shall submit those draft regulatory**

Text proposed by the European Commission or current text of the CRR	**Amendments proposed by the ECB**[7]
	technical standards to the Commission by 31 December 2017. **Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.'**
<u>*Explanation*</u> *Paragraph 7a introduces a requirement for the competent authority to approve the implementation of the A-CVA approach, see also the proposed amendment to Article 383(1) of the CRR.* *Paragraph 7b introduces material changes or extensions to the A-CVA, which has the same rationale as the IMM model changes.* *Paragraph 7c mandates the EBA to develop materiality criteria for model changes and extensions, and assessment criteria for A-CVA investigations.*	
Amendment 56 Point (94) of Article 1 of the proposed regulation (Article 394(3) of the CRR)	
'3. The information referred to in paragraphs 1 and 2 shall be reported to competent authorities with the following frequency: (a) small institutions as defined in Article 430a shall report on an annual basis; (b) subject to paragraph 4, other institutions shall report on a semi-annual basis or more frequently.'	'3. The information referred to in paragraphs 1 and 2 shall be reported to **the** competent authorities ~~with the following frequency:~~ ~~(a) small institutions as defined in Article 430a shall report on an annual basis;~~ ~~(b) subject to paragraph 4, other institutions shall report~~ on a **quarterly** ~~semi-annual~~ basis or more frequently.'
<u>*Explanation*</u> *See the explanation for the proposed amendment to Article 99 of the CRR.*	
Amendment 57 Article 400(2)(c) of the CRR	
'2. Competent authorities may fully or partially exempt the following exposures:	'2. Competent authorities may fully or partially exempt the following exposures:

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[…] c) exposures, including participations or other kinds of holdings, incurred by an institution to its parent undertaking, to other subsidiaries of that parent undertaking or to its own subsidiaries, in so far as those undertakings are covered by the supervision on a consolidated basis to which the institution itself is subject, in accordance with this Regulation, Directive 2002/87/EC or with equivalent standards in force in a third country;'	[…] c) exposures, including participations or other kinds of holdings, incurred by an institution to its parent undertaking, to other subsidiaries of that parent undertaking or to its own subsidiaries, in so far as those undertakings **are established in a Member State or in a country applying equivalent prudential and supervisory requirements and** are covered by the supervision on a consolidated basis to which the institution itself is subject, in accordance with this Regulation, Directive 2002/87/EC or with equivalent standards in force in a third country;'

<u>*Explanation*</u>

The current wording of the CRR includes in the intra-group large exposures exemption all the entities included in the perimeter of prudential consolidation according to the CRR, FICOD and equivalent third country standards, regardless of whether they are established in equivalent or non-equivalent third countries. In this connection, the current text of the CRR appears to show several inconsistencies, for instance, with the Basel Core Principles (see Principle 12), other CRR provisions (e.g. Article 391) and the provisions in the CRD IV on consolidated supervision (see Chapter 3) and raises overall prudential concerns. These inconsistencies result in the exemption also applying to entities established in non-equivalent third countries, as long as the third country subsidiaries of the Union parent, or the sister companies of a Union institution, are prudentially consolidated according to the CRR, the FICOD or equivalent third country criteria (applicable to the parent in third countries).

ECB staff considers that, provided that these subsidiaries are prudentially consolidated, the equivalence of the jurisdiction of establishment of the subsidiaries or sister companies is irrelevant when applying Article 400(2)(c). The only way to address this apparent inconsistency would be to deconsolidate certain subsidiaries under the currently applicable framework on prudential consolidation (see Articles 11 and 18 of the CRR and also Article 19(2)(a) of the CRR as regards third country subsidiaries). However, that would lower prudential requirements at the consolidated level.

This amendment aims to address these inconsistencies by excluding from the scope of the exemption the subsidiaries or sister companies of Union credit institutions established in non-equivalent third countries.

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Amendment 58 Point (107) of Article 1 of the proposed regulation (Article 415(2) of the CRR)	
'2. An institution shall report separately to the competent authorities of the home Member State, in the reporting currency, the items referred to in Titles II, III, IV and in Annex III as appropriate denominated in the currencies determined in accordance with the following: […]'	'2. An institution shall report separately to the competent authorities of the home Member State, ~~in the reporting currency,~~ the items referred to in Titles II, III, IV and in Annex III as appropriate denominated in the currencies determined in accordance with the following: […]'
<u>Explanation</u> *Article 415(2) of the proposed amendments to the CRR requires credit institutions and investment firms to separately report liquidity items (liquidity coverage ratio (LCR), net stable funding ratio (NSFR), additional liquidity monitoring metrics) in significant currencies, including the reporting currency as provided in Article 415(1).* *The expression 'in the reporting currency' in the first paragraph of Article 415(2) of the proposed amendments to the CRR could imply that separate reporting will be required in the reporting currency rather than in the foreign currency. This would conflict with the current format under the DPM and XBRL taxonomy release 2.4, which has been used for the first reports under Commission Delegated Regulation (EU) 2015/61[13] and Commission Delegated Regulation (EU) 2015/62[14], in accordance with which the templates for significant foreign currencies must be reported in the original currency and must not be converted into the reporting currency.*	
Amendment 59 Point (114) of Article 1 of the proposed regulation (Article 428d(2) of the CRR)	
'2. By way of derogation from Article 428c(1), institutions shall take into account the accounting value of derivative positions on a net basis where those positions are included in the same netting set that fulfils the requirements set out in Articles 295,	'2. By way of derogation from Article 428c(1), institutions shall take into account the ~~accounting value~~ **market value** of derivative positions on a net basis where those positions are included in the same netting set that fulfils the requirements set

13 Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to liquidity coverage requirements for credit institutions (OJ L 11, 17.1.2015, p. 1).

14 Commission Delegated Regulation (EU) 2015/62 of 10 October 2014 amending Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to the leverage ratio (OJ L 11, 17.1.2015, p. 37).

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296 and 297. Where that is not the case, institutions shall take into account the accounting value of derivative positions on a gross basis and they shall treat those derivatives positions as their own netting set for the purpose of Chapter 4 of this Title.'	out in Articles 295, 296 and 297. Where that is not the case, institutions shall take into account the ~~accounting value~~ **market value** of derivative positions on a gross basis and they shall treat those derivatives positions as their own netting set for the purpose of Chapter 4 of this Title.'
Explanation *There is an inconsistency between paragraph 2 and paragraph 3 of Article 428d, since in paragraph 3 reference is made to the market value of a netting set. ECB staff believes that it may therefore be misleading to refer to the accounting value in paragraph 2 as this may result in inconsistent treatment across banks. Reference should thus be made to the market value to ensure that the treatment of derivatives in the NSFR is independent from the relevant accounting scheme.*	
Amendment 60 Point (114) of Article 1 of the proposed regulation (Article 428f(2)(c) and (d) of the CRR)	
'2. Assets and liabilities directly linked to the following products or services shall be considered to meet the conditions of paragraph 1 and be considered as interdependent : […] (c) covered bonds as referred to in Article 52(4) of Directive 2009/65/EC; (d) covered bonds that meet the eligibility requirements for the treatment set out in Article 129(4) or (5), as appropriate, where the underlying loans are fully matched funded with the covered bonds issued or where there exists non-discretionary extendable maturity triggers on the covered bonds of one year or more until the term of the underlying loans in the event of refinancing failure at the maturity date of the covered bond;	'2. Assets and liabilities directly linked to the following products or services shall be considered to meet the conditions of paragraph 1 and be considered as interdependent: […] (~~c) covered bonds as referred to in Article 52(4) of Directive 2009/65/EC;~~ (~~d~~**c**) covered bonds that meet the eligibility requirements for the treatment set out in Article 129(4) or (5), as appropriate, **and** where the underlying loans are fully matched funded with the covered bonds issued ~~or where there exists non-discretionary extendable maturity triggers on the covered bonds of one year or more until the term of the underlying loans in the event of refinancing failure at the maturity date of the covered bond~~;'
Explanation *The current legislative proposal contains an exemption from the NSFR requirement for assets and liabilities directly linked to: (a) UCITS covered bonds, (b) covered bonds where assets and liabilities are*	

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fully matched, and (c) soft bullet and conditional pass-through covered bonds whose maturity may be triggered in a non-discretionary manner if refinancing fails at the maturity date of the covered bond. *ECB staff supports the recommendation made by the EBA, in its December 2015 report, that only fully matched funding pass-through covered bond structures should be exempted from the NSFR and that, for non-fully matched structures, there remains a funding risk related to the mismatch between assets and liabilities. In this regard, the general exemption of covered bonds from the NSFR requirement under point (a) is considered to be both overly permissive and unjustified, and ECB staff therefore considers that it should be removed. Furthermore, the exemption of covered bonds which have a non-discretionary extendable maturity trigger under point (d) (i.e. for 'soft bullet' and 'conditional pass-through' structures) should be eliminated in view of the fact that the structural provisions allowing the maturity extension in certain conditions protect investors and not the issuers. Indeed, the structural provisions of such structures extend the maturity of the bonds if the issuer defaults and they do not minimise the funding risks to the issuer. It should be noted that such triggers are generally 'hard' triggers that are designed to minimise credit risks to investors in exchange for extension risk, namely the risk that the final maturity will be longer than expected; as such, the triggers are generally designed not to offer the issuer an option to extend. Generally, a prerequisite for an extension is that the issuer defaults, i.e. the issuer cannot redeem the bonds on their initial maturity date.* *In conclusion, all covered bonds that are not fully matched funded, including 'soft bullet' and 'conditional pass-through' structures, do not reduce the funding risks of the issuer and pose the same funding risks as any maturing liability. As such, they should remain subject to the NSFR requirements. Considering the importance of covered bonds in the banks' funding structures, any NSFR exemption for such covered bonds represents a very significant dilution of the prudential standards and would raise very significant prudential concerns.*	
Amendment 61 Point (114) of Article 1 of the proposed regulation (Article 428f(2)(e) of the CRR)	
'2. Assets and liabilities directly linked to the following products or services shall be considered to meet the conditions of paragraph 1 and be considered as interdependent: […] (e) derivatives client clearing activities, provided that the institution does not guarantee the performance of the CCP to its clients and, as a result, does not incur any funding risk.'	'2. Assets and liabilities directly linked to the following products or services shall be considered to meet the conditions of paragraph 1 and be considered as interdependent: […] (~~e~~**d**) **subject to supervisory approval,** derivatives client clearing activities, provided that the institution does not guarantee **either** the performance of the CCP to its clients **or the performance of the**

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
	client to the CCP and, as a result, does not incur any funding risk.'
<u>*Explanation*</u> *ECB staff generally agrees with the need to exempt derivatives client clearing activities from the NSFR, provided that the exemption is justified on prudential grounds. The requirement that the reporting institution must not guarantee the performance of the CCP as a condition for treating derivatives client clearing as interdependent assets and liabilities is a necessary, albeit insufficient, condition for NSFR exemption. A reporting institution also faces funding risks if it uses its own funds to cover the margin calls that the CCP requires for the client trades. As such, another necessary condition for exemption is to require that the reporting institution has internal and client arrangements in place that ensure that all margin calls issued by the CCP are met by funds provided by the client and not by the institution. Given the uneven quality of methods in place to ensure that the institution merely functions as a pass-through conduit for client clearing activities, the exemption of client clearing from NSFR should furthermore be subject to prior supervisory approval on a case-by-case basis.*	
Amendment 62 Point (114) of Article 1 of the proposed regulation (Article 428k(3)(a) and Article 428ag(3)(a) of the CRR)	
'(a) variation margins received by institutions from their counterparties shall be deducted from the market value of a netting set with positive market value where the collateral received as variation margins qualifies as Level 1 assets in accordance with Title II of Delegated Regulation (EU) 2015/61, excluding extremely high quality covered bonds referred to in point (f) of Article 10(1) of that Delegated Regulation, and that institutions would be legally entitled and operationally able to reuse;'	'(a) variation margins received by institutions from their counterparties shall be deducted from the market value of a netting set with positive market value where the collateral received as variation margins qualifies as Level 1 assets in accordance with Title II of Delegated Regulation (EU) 2015/61, excluding extremely high quality covered bonds referred to in point (f) of Article 10(1) of that Delegated Regulation, and that institutions would be legally entitled and operationally able to reuse~~;~~**. Subject to Article 428s, the amount of Level 1 assets to be deducted from the value of a netting set with positive market value shall be the amount after applying the required stable funding factor in accordance with the respective Article.'**

<table>
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<tr><td colspan="2">
<u>Explanation</u>
This amendment is necessary due to amendments to where it is proposed to apply a 5 % required stable funding (RSF) factor to Level 1 assets in accordance with Title II of Delegated Regulation (EU) 2015/61, excluding extremely high quality covered bonds referred to in point (f) of Article 10(1) of that Regulation.
The purpose of the proposed Articles 428k(3)(a) and 428ag(3)(a) is to allow certain Level 1 assets to be recognised as collateral that is deducted from the market value of derivative assets when calculating RSF charges pursuant to Articles 428k and 428ag. However, such value of the collateral should be its NSFR value, i.e. after taking into account the RSF charges. For example, a Level 1 collateral subject to Article 428s, i.e. to a RSF charge of 5 %, with a value of 100, needs to be considered as having the value of 95 for the purposes of the netting, reflecting the fact that the funding value of this collateral is 95 (i.e. 5 out of 100 must be self-funded). A Level 1 asset subject to Article 428r (i.e. cash and central bank reserves subject to a 0 % RSF factor) does not require a haircut and its value can be used in full for the purposes of the offsetting of netting sets with positive market value. Consequently, it is necessary to adjust Articles 428k(3)(a) and 428ag(3)(a) to ensure consistency with regard to the RSF factors that are (implicitly) applied to Level 1 assets.
</td></tr>
<tr><td colspan="2">Amendment 63
Point (114) of Article 1 of the proposed regulation
(Article 428q(2) of the CRR)</td></tr>
<tr><td>‘2. For assets that are encumbered, the maturity used to determine the appropriate required stable funding factors to be applied under Section 2 of this Chapter shall be either the residual maturity of the asset or the maturity of the transaction being the source of encumbrance, whichever is the longest. An asset that has less than six months remaining in the encumbrance period shall be subject to the required stable funding factor to be applied under Section 2 of this Chapter to the same asset held unencumbered.’</td><td>‘2. For assets that are encumbered, for a period of six months or more, <s>the maturity used to determine</s> the appropriate required stable funding factors to be applied under Section 2 of this Chapter shall be either the required stable funding factor for the assets as if they were unencumbered, or the required stable funding factor according to Article 428ac(f) or Article 428ag(1)(a), according to the maturity of the transaction that is the source of encumbrance <s>residual maturity of the asset or the maturity of the transaction being the source of encumbrance,</s> whichever is the highest. This also applies if the residual maturity of the assets is shorter than the maturity of the transaction that is the source of encumbrance. An asset that has less than six months remaining in the encumbrance</td></tr>
</table>

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
	period shall be subject to the required stable funding factor to be applied under Section 2 of this Chapter to the same asset held unencumbered.’
Explanation *The current wording would unjustifiably penalise transactions with a residual maturity of the asset of more than one year and transactions for which the asset is encumbered for a period of between six months and one year. For instance, a Level 2A asset which is encumbered for a period of seven months and which has a residual maturity of two years, would be treated as if it had a maturity of two years and would thus receive an RSF factor of 100 %, whereas under the Basel III NSFR framework such transactions would receive an RSF factor of 50 %. ECB staff believes that reference should be made to the higher RSF factor instead of to the longer maturity.* *It should also be considered whether this provision should be moved to another section, since this section explicitly refers to residual maturity.*	
Amendment 64 Point (114) of Article 1 of the proposed regulation (Article 428q(3) of the CRR)	
‘3. Where an institution re-uses or re-pledges an asset that was borrowed, including in secured lending transactions and capital market-driven transactions as defined in Article 192(2) and (3), and that is accounted for off balance sheet, the residual maturity of the transaction through which that asset has been borrowed and which is used to determine the required stable funding factor to be applied under Section 2 of this Chapter, shall be the residual maturity of the transaction through which the asset is re-used or re-pledged.’	‘3. Where an institution re-uses or re-pledges an asset that was borrowed, including in secured lending transactions and capital market-driven transactions as defined in Article 192(2) and (3), and that is accounted for off balance sheet, the residual maturity of the transaction through which that asset has been borrowed and which is used to determine the required stable funding factor to be applied under Section 2 of this Chapter, shall be the residual maturity of the transaction through which the asset is re-used or re-pledged**, provided that the residual maturity is longer than that of the maturity of the re-use or re-pledge transaction**.’
Explanation *The current wording could lead to arbitrage in cases where the RSF factor derived from the application of the term of encumbrance for the term of the second transaction is lower than the RSF arising from the first transaction. For instance, this would be the case in a long-term reverse repo (with a maturity of nine*	

<table>
<tr><th>Text proposed by the European Commission or current text of the CRR</th><th>Amendments proposed by the ECB[7]</th></tr>
<tr><td colspan="2">months) followed by a short-term repo (with a maturity of one month), against Level 1 collateral. Without the proposed clarification the RSF charge would be 5 % as defined under Article 428s of the legislative proposal (corresponding to an RSF charge for a one-month reverse repo) instead of 50 %, (corresponding to the RSF charge for a nine-month reverse repo). Thus, in such a case, two back-to-back transactions would result in a lower RSF charge than if only the first transaction (reverse repo) had taken place. The drafting suggestion clarifies that the charge for the first transaction should consider the maturity of the second transaction, but only if the maturity of the first transaction was longer than that of the second.</td></tr>
<tr><td colspan="2">Amendment 65
Point (114) of Article 1 of the proposed regulation
(Article 428r(1) of the CRR)</td></tr>
<tr><td>‘1. The following assets shall be subject to a 0% required stable funding factor:
(a) unencumbered assets eligible as Level 1 high quality liquid assets in accordance with Article 10 of Delegated Regulation (EU) 2015/61, excluding extremely high quality covered bonds referred to in point (f) of Article 10(1) of that Delegated Regulation, regardless of their compliance with the operational requirements as set out in Article 8 of that Delegated Regulation;
[…]’</td><td>‘1. The following assets shall be subject to a 0 % required stable funding factor:
(a) coins and banknotes in accordance with Article 10(1)(a) of Delegated Regulation (EU) No 2015/61; regardless of their compliance with the operational requirements set out in Article 8 of that Delegated Regulation <s>unencumbered assets eligible as Level 1 high quality liquid assets in accordance with Article 10 of Delegated Regulation (EU) No 2015/61, excluding extremely high quality covered bonds referred to in point (f) of Article 10(1) of that Delegated Regulation, regardless of compliance with the operational requirements set out in Article 8 of that Delegated Regulation</s>;
[…]’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The proposed amendments to the CRR deviate from the BCBS NSFR framework regarding the treatment of Level 1 high quality liquid assets by charging a 0 % instead of 5 % RSF factor. While consistency with the LCR framework has some merits, some instruments should be treated differently. While the 0 % RSF factor for cash in the forms of coins and banknotes and central bank reserves is justified and complies with the NSFR Basel requirements, the 0 % RSF factor for all other Level 1 assets should be revised. NSFR charges for assets are based on the costs of monetising such assets outright via sales or repos, and for repos the NSFR funding requirement must cover the repo haircut. These assets are subject to</td></tr>
</table>

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
some price risk over a time horizon of one year even in the absence of a stress scenario, and if monetised via repos would not be subject to a 0 % haircut; as such, they should therefore be subject to an NSFR. It is therefore proposed to apply a 5 % RSF factor for those assets that would also be compliant with the BCBS NSFR framework.	
Amendment 66 Point (114) of Article 1 of the proposed regulation (Article 428s(a) and (b) of the CRR)	
'The following assets and off-balance sheet items shall be subject to a 5% required stable funding factor: (a) unencumbered shares or units in CIUs eligible for a 5% haircut for the calculation of the liquidity coverage ratio in accordance with point (b) of Article 15(2) of Delegated Regulation (EU) 2015/61, regardless of their compliance with the operational requirements and with the requirements on the composition of the liquidity buffer as set out in Articles 8 and 17 of that Delegated Regulation; (b) assets that have a residual maturity of less than six months resulting from secured lending transactions and capital market-driven transactions as defined in Article 192(2) and (3) with financial customers, where those assets are collateralised by assets that qualify as Level 1 assets under Title II of Delegated Regulation (EU) 2015/61, excluding extremely high quality covered bonds referred to in point (f) of Article 10(1) of that Delegated Regulation , and where the institution would be legally entitled and operationally able to reuse those assets for the life of the transaction, regardless of whether the collateral has already been reused. Institutions shall take those assets into account on a net basis where Article 428e(1) of this Regulation applies;	'The following assets and off-balance sheet items shall be subject to a 5 % required stable funding factor: (a) **unencumbered assets eligible as Level 1 high quality liquid assets in accordance with Article 10 of Delegated Regulation (EU) No 2015/61, excluding those Level 1 assets already included under Article 428r(1) and excluding extremely high quality covered bonds referred to in point (f) of Article 10(1) of Delegated Regulation (EU) No 2015/61, regardless of their compliance with the operational requirements set out in Article 8 of that Delegated Regulation;** **(b)** unencumbered shares or units in CIUs eligible for a 5 % haircut for the calculation of the liquidity coverage ratio in accordance with point (b) of Article 15(2) of Delegated Regulation (EU) 2015/61, regardless of their compliance with the operational requirements and with the requirements on the composition of the liquidity buffer as set out in Articles 8 and 17 of that Delegated Regulation; ~~(b) assets that have a residual maturity of less than six months resulting from secured lending transactions and capital market-driven transactions as defined in Article 192(2) and (3) with financial customers, where those assets are collateralised~~

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
[…]'	~~by assets that qualify as Level 1 assets under Title II of Delegated Regulation (EU) 2015/61, excluding extremely high quality covered bonds referred to in point (f) of Article 10(1) of that Delegated Regulation , and where the institution would be legally entitled and operationally able to reuse those assets for the life of the transaction, regardless of whether the collateral has already been reused. Institutions shall take those assets into account on a net basis where Article 428e(1) of this Regulation applies;'~~ […]'
<u>*Explanation*</u> *See the explanation provided for Amendment 66 on the treatment of Level 1 high quality liquid assets under Article 428r(1) of the proposed amendments to the CRR.* *The proposed wording of point (b) deviates from the Basel standards by lowering the RSF charges for secured lending against Level 1 assets, excluding extremely high quality bonds, from 10 % to 5 %. At the same time, the Commission proposes in Article 510(6) of the CRR to task the EBA with assessing, two years after the date of the application of the NSFR, the adequacy of the 5 % charge. Based on the EBA's assessment, the Commission could preserve the proposed treatment or could take no action, in which case the treatment would revert to the Basel standards. While lower charges might be justified, no assessment has yet been made. Moreover, the motivation for deviating from the Basel standards is unclear, considering that the EBA, in its 2015 NSFR report, found the Basel charges to be adequate and did not find any evidence of impaired market functioning that would justify lowering the RSF charges. Consequently, for the transitional period, ECB staff highly recommends applying the RSF factors as provided under the Basel III NSFR framework.*	
Amendment 67 Point (114) of Article 1 of the proposed regulation (Article 428u(1)(a) of the CRR)	
'1. The following assets and off-balance sheet items shall be subject to a 10% required stable funding factor: (a) assets that have a residual maturity of less than six months resulting from secured lending	'1. The following assets and off-balance sheet items shall be subject to a 10 % required stable funding factor: '(a) assets that have a residual maturity of less than six months resulting from secured lending

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
transactions and capital market-driven transactions as defined in Article 192(2) and (3) with financial customers, other than those referred to in point (b) of Article 428s. Those assets shall be taken into account on a net basis where Article 428e(1) applies; '(b) assets that have a residual maturity of less than six months resulting from transactions with financial customers other than those referred to in point (b) of Article 428s and in point (a) of this Article; '	transactions and capital market-driven transactions as defined in Article 192(2) and (3) with financial customers, ~~other than those referred to in point (b) of Article 428s. Those assets shall be taken into account on a net basis where Article 428e(1) applies;~~**, where those assets are collateralised by assets that qualify as Level 1 assets under Title II of Delegated Regulation (EU) 2015/61, excluding extremely high quality covered bonds referred to in point (f) of Article 10(1) of that Delegated Regulation, and where the institution would be legally entitled and operationally able to reuse those assets for the life of the transaction, regardless of whether the collateral has already been reused. Institutions shall take those assets into account on a net basis where Article 428e(1) applies;** ~~'(b) assets that have a residual maturity of less than six months resulting from transactions with financial customers other than those referred to in point (b) of Article 428s and in point (a) of this Article;~~'

Explanation

The proposal deviates from the Basel standards by lowering the RSF charges both for short-term (less than six months) secured lending against assets other than Level 1, excluding extremely high quality bonds, and for all short-term unsecured lending. In both cases the RSF charge is lowered from 15 % to 10 %. At the same time, the Commission proposes in Article 510(6) to entrust the EBA with the task of assessing, two years after the date of the application of the NSFR, the adequacy of the 10 % charge. Based on the EBA's assessment, the Commission could preserve the proposed treatment or could take no action, in which case the treatment would revert to the Basel standards. While lower charges might be justified for secured transactions, no assessment has yet been made. In particular, lowering the RSF charges for unsecured lending appears difficult to justify. Indeed, short-term unsecured lending would be treated in the same way as secured lending, even if the funding risk of secured lending is significantly lower than unsecured lending, since the collateral received, insofar as it can be remortgaged, could be partially monetised and therefore offset the initial loss of funding from the lending operation. Moreover, the reason for deviating from the Basel standards is unclear, considering that the EBA, in its 2015 NSFR report, found the Basel charges to be adequate and did not find any evidence of impaired market

<table>
<tr><th>Text proposed by the European Commission or current text of the CRR</th><th>Amendments proposed by the ECB[7]</th></tr>
<tr><td colspan="2">functioning that would justify lowering the RSF charges. Consequently, for the transitional period, ECB staff highly recommends applying the RSF factors as provided under the Basel III NSFR framework.</td></tr>
<tr><td colspan="2">Amendment 68
Point (114) of Article 1 of the proposed regulation
(Article 428u(2) of the CRR)</td></tr>
<tr><td>‘2. For all netting sets of derivative contracts that are not subject to margin agreements under which institutions post variation margins to their counterparties, institutions shall apply a 10% required stable funding factor to the absolute market value of those netting sets of derivative contracts, gross of any collateral posted, where those netting sets have a negative market value.’</td><td>‘~~2. For all netting sets of derivative contracts not subject to margin agreements under which institutions post variation margins to their counterparties, institutions shall apply a 10% required stable funding factor to the absolute market value of netting sets of derivative contracts, gross of collateral posted, where those netting sets have a negative market value.~~’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
Paragraph 43(d) of the BCBS NSFR framework provides an RSF add-on of 20 % of gross derivative liabilities, before deducting any variation margin posted, in order to capture future funding risks from derivative positions, for example due to an increase in derivative liabilities followed by a need to post collateral to the counterparty. The treatment of the 20 % RSF add-on in the NSFR raised both industry and supervisory concerns that the current provision is poorly designed and does not effectively capture funding risks in derivative portfolios. In particular, it may underestimate potential future exposures, as large notional long-maturity transactions may sometimes have minimal mark-to-market values while being subject to very large potential future exposures.
The proposed amendments to the CRR provide a different treatment for the determination of future funding risk by applying a 10 % RSF add-on for unmargined derivative liabilities. Moreover, for margined derivative liabilities, institutions have the option to choose between either applying a 20 % RSF factor to the gross market value of derivatives or using a charge related to the potential future exposure (PFE) as calculated under the standardised approach for counterparty credit risk. On the latter, the NSFR charge is calculated as the absolute amount of the difference between the PFE amount associated with derivatives with negative market value and the PFE amount for derivatives with a positive market value. Furthermore, the current wording of the proposed amendments to the CRR implies that for those banks that are using either a simplified standardised approach or the original exposure method for counterparty credit risk, the margined derivative liabilities would not be subject to any future funding requirement.
Overall, the proposal raises significant prudential concerns related to arbitrage, a level playing field and consistency. First, arbitrage and consistency concerns arise from, on one hand, the option to apply either</td></tr>
</table>

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
a 20 % RSF factor to gross derivative liabilities or an alternative measure based on the PFE calculation and, on the other hand, from the de facto exemption from a NSFR charge related to potential future derivative exposure for banks using counterparty credit risk approaches other than SA-CRR. Second, conceptual concerns arise, on one hand from the proposal to use the PFE component from the standardised approach counterparty credit risk (SA-CCR) framework without a sufficient adaptation to NSFR specificities. In particular, PFE as computed in SA-CCR captures the exposure of the bank to its counterparty, i.e. future derivative assets; while the risk that needs to be captured is that the bank may need to collateralise the counterparty's future exposure to the bank, i.e. a SA-CCR computed from the counterparty's perspective. Moreover, derivative assets and not only derivative liabilities may become derivative liabilities in the future; as such, the computation of the PFE based measure as a difference between the PFE of derivative netting sets with positive and the PFE of netting sets with negative market values (the absolute difference between) creates an inconsistency, as given that both derivative assets and liabilities may create funding needs in the future, no netting should be allowed. Finally, while there are merits in applying lower RSF charges to unmargined derivatives, further information is necessary to determine which unmargined derivatives are truly unmargined and do not raise significant funding concerns, and which become margined upon certain embedded triggers, such as the deterioration in the credit standing of the institution. Moreover, such determination should be applied both to the portion of the current funding risk and to the future funding risk; as proposed, the differentiation only applies to the future funding risk. *In conclusion, given the significant deficiencies of the proposed alternative to the Basel NSFR, until a more appropriate methodology is identified, ECB staff prefers an alignment with the Basel standards. The investigation of a more appropriate methodology should consider to what extent the PFE measure from the SA-CRR can be adapted to the NSFR, and to what extent there is merit in applying differentiated RSF charges to margined and unmargined derivatives. In any case, the implementation of the PFE measure should be preceded by a quantitative impact study undertaken by the EBA, given that this option was not discussed at the BCBS level for the NSFR and therefore its impact on the ratio is currently unknown.*	
Amendment 69 Point (114) of Article 1 of the proposed regulation (Article 428w(c) and (d) of the CRR)	
'The following assets and off-balance sheet items shall be subject to a 15% required stable funding factor: […]'	'The following assets and off-balance sheet items shall be subject to a 15 % required stable funding factor: […] **(c) assets that have a residual maturity of less than six months resulting from secured lending**

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
	transactions and capital market-driven transactions with financial customers, as defined in Article 192(2) and (3), other than those referred to in point (a) of Article 428u, shall be taken into account on a net basis where Article 428e(1) applies; **(d) assets that have a residual maturity of less than six months resulting from transactions with financial customers, other than those referred to in point (a) of Article 428u and in point (c) of this Article;'**
<u>*Explanation*</u> *See the explanation provided for the proposed amendment to Article 428u(1)(a) of the CRR on the treatment of secured lending and capital market-driven transactions against assets other than Level 1, excluding extremely high quality bonds, and for all short term unsecured lending as provided under Article 428u(1) of the proposed amendments to the CRR.*	
Amendment 70 Point (114) of Article 1 of the proposed regulation (Article 428x of the CRR)	
'[…] 2. For all netting sets of derivative contracts subject to margin agreements under which institutions post variation margins to their counterparties, institutions shall apply a 20% required stable funding factor to the absolute market value of those netting sets of derivative contracts, gross of any collateral posted, where those netting sets have a negative market value. 3. An institution may replace the stable funding requirement set out in paragraph 2 for all netting sets of derivative contracts subject to margin agreements under which an institution posts variation margins to its counterparty with the amount of required stable funding calculated as the	'[…] 2. For all netting sets of derivative contracts ~~subject to margin agreements under which institutions post variation margins to their counterparties,~~ institutions shall apply a 20 % required stable funding factor to the absolute market value of those netting sets of derivative contracts, gross of any collateral posted, where those netting sets have a negative market value. ~~3. An institution may replace the stable funding requirement set out in paragraph 2 for all netting sets of derivative contracts subject to margin agreements under which an institution posts variation margins to its counterparty with the amount of required stable funding calculated as the~~

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
absolute amount of the difference between:	~~absolute amount of the difference between:~~
(a) for all netting sets with negative market value, gross of collateral posted, and which are subject to a margin agreement under which the institution posts variation margin to its counterparty, the sum of all the risk category Add-on(a) calculated in accordance with Article 278(1);	~~(a) for all netting sets with negative market value, gross of collateral posted, and which are subject to a margin agreement under which the institution posts variation margin to its counterparty, the sum of all the risk category Addon(a) calculated in accordance with Article 278(1);~~
(b) for all netting sets with positive market value, gross of collateral received, and which are subject to a margin agreement under which the institution receives variation margin from its counterparty, the sum of all the risk category Add-on(a) calculated in accordance with Article 278(1).	~~(b) for all netting sets with positive market value, gross of collateral received, and which are subject to a margin agreement under which the institution receives variation margin from its counterparty, the sum of all the risk category Addon(a) calculated in accordance with Article 278(1).~~
For the purpose of this calculation and in order to determine the risk position of derivative contracts included in the netting sets referred to in the first sub-paragraph, institutions shall replace the maturity factor calculated in accordance with point (b) of Article 279c(1) by either the maturity factor calculated in accordance with point (a) of Article 279c(1) or by the value of 1.	~~For the purpose of this calculation and in order to determine the risk position of derivative contracts included in the netting sets referred to in the first sub-paragraph, institutions shall replace the maturity factor calculated in accordance with point (b) of Article 279c(1) by either the maturity factor calculated in accordance with point (a) of Article 279c(1) or by the value of 1.~~
4. Institutions that use the methods set out in Sections 4 or 5 of Chapter 6 of Title II of Part Three to determine the exposure value of their derivative contracts shall not apply the stable funding requirement set out in paragraph 2 of this Article to netting sets of derivative contracts subject to margin agreements under which institutions post variation margins to their counterparties and where those netting sets have a negative market value.’	~~4. Institutions that use the methods set out in Sections 4 or 5 of Chapter 6 of Title II of Part Three to determine the exposure value of their derivative contracts shall not apply the stable funding requirement set out in paragraph 2 of this Article to netting sets of derivative contracts subject to margin agreements under which institutions post variation margins to their counterparties and where those netting sets have a negative market value.~~’
<u>*Explanation*</u> *See the explanation provided for the proposed amendment to Article 428u(2) of the CRR.*	

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
Amendment 71 Point (114) of Article 1 of the proposed regulation (Article 429a of the CRR)	
'1. By way of derogation from point (a) of Article 429(4), an institution may exclude any of the following exposures from its exposure measure :	'1. By way of derogation from point (a) of Article 429(4), an institution may exclude any of the following exposures from its exposure measure:
(a) the amounts deducted from Common Equity Tier 1 items in accordance with Article 36(1)(d);	(a) the amounts deducted from Common Equity Tier 1 items in accordance with Article 36(1)(d);
(b) the assets deducted in the calculation of the capital measure referred to in Article 429(3);	(b) the assets deducted in the calculation of the capital measure referred to in Article 429(3);
(c) exposures that are assigned a risk weight of 0% in accordance with Article 113(6);	~~(c) exposures that are assigned a risk weight of 0% in accordance with Article 113(6);~~
(d) where the institution is a public development credit institution, the exposures arising from assets that constitute claims on regional governments, local authorities or public sector entities in relation to public sector investments;	~~(d) where the institution is a public development credit institution, the exposures arising from assets that constitute claims on regional governments, local authorities or public sector entities in relation to public sector investments;~~
(e) exposures arising from passing-through promotional loans to other credit institutions granting the promotional loan;	~~(e) exposures arising from passing-through promotional loans to other credit institutions granting the promotional loan;~~
(f) the guaranteed parts of exposures arising from export credits that meet both of the following conditions:	(f) the guaranteed parts of exposures arising from export credits that meet both of the following conditions:
(i) ,the guarantee is provided by an export credit agency or by a central government;	(i) ,the guarantee is provided by an export credit agency or by a central government;
(ii) a 0% risk weight applies to the guaranteed part of the exposure in accordance with Article 114(4) or Article 116(4);	(ii) a 0% risk weight applies to the guaranteed part of the exposure in accordance with Article 114(4) or Article 116(4);
(g) where the institution is a clearing member of a QCCP , the trade exposures of that institution, provided that they are cleared with that QCCP and meet the conditions laid down in point (c) of Article 306(1).	(**d**~~g~~) where the institution is a clearing member of a QCCP , the trade exposures of that institution, provided that they are cleared with that QCCP and meet the conditions laid down in point (c) of Article 306(1).
(h) where the institution is a higher-level client within a multi- level client structure, the trade	(**e**~~h~~) where the institution is a higher-level client within a multi- level client structure, the trade

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
exposures to the clearing member or to an entity that serves as a higher-level client to that institution, provided that the conditions laid down in Article 305(2) are met and provided that the institution is not obligated to reimburse its client for any losses suffered in the event of default of either the clearing member or the QCCP.	exposures to the clearing member or to an entity that serves as a higher-level client to that institution, provided that the conditions laid down in Article 305(2) are met and provided that the institution is not obligated to reimburse its client for any losses suffered in the event of default of either the clearing member or the QCCP.
(i) fiduciary assets which meet all of the following conditions:	(**f**~~i~~) fiduciary assets which meet all of the following conditions:
(i) they are recognised on the institution's balance sheet by national generally accepted accounting principles, in accordance with Article 10 of Directive 86/635/EEC;	(i) they are recognised on the institution's balance sheet by national generally accepted accounting principles, in accordance with Article 10 of Directive 86/635/EEC;
(ii) they meet the criteria for non-recognition set out in International Accounting Standard (IAS) 39, as applied in accordance with Regulation (EC) No 1606/2002;	(ii) they meet the criteria for non-recognition set out in International Accounting Standard (IAS) 39, as applied in accordance with Regulation (EC) No 1606/2002;
(iii) they meet the criteria for non-consolidation set out in International Financial Reporting Standard (IFRS) 10, as applied in accordance with Regulation (EC) No 1606/2002, where applicable.	(iii) they meet the criteria for non-consolidation set out in International Financial Reporting Standard (IFRS) 10, as applied in accordance with Regulation (EC) No 1606/2002, where applicable.
(j) exposures that meet all of the following conditions:	(~~j) exposures that meet all of the following conditions:~~
(i) they are exposures to a public sector entity;	~~(i) they are exposures to a public sector entity;~~
(ii) they are treated in accordance with Article 116(4);	~~(ii) they are treated in accordance with Article 116(4);~~
(iii) they arise from deposits that the institution is legally obliged to transfer to the public sector entity referred to in point (i) for the purposes of funding general interest investments;	~~(iii) they arise from deposits that the institution is legally obliged to transfer to the public sector entity referred to in point (i) for the purposes of funding general interest investments;~~
(k) the excess collateral deposited at triparty agents that has not been lent out;	(**g**~~k~~) the excess collateral deposited at triparty agents that has not been lent out;
[…]'	[…]'

<u>*Explanation*</u>

The proposed amendment to the CRR eliminates the existing discretion for competent authorities to

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]

exempt from the leverage ratio exposure measure any intragroup exposures already exempted from risk weights and exposures arising from the pass-through of regulated savings, and instead introduces automatic exemptions for these exposures. ECB staff is of the view that credit institutions should be permitted to exclude these exposures from the leverage ratio only if ex ante approval is given by the competent authority, following an assessment of the underlying leverage related risks as is the case in currently applicable Union law. In respect of significant institutions in the SSM the assessment is based on the ECB Guide on options and discretions available in Union law.

It is proposed that points (c), (d) and (j) of the proposed Article 429a should be deleted and that the current text of the CRR be maintained, in order for the supervisor to have the possibility to assess the risk of excluding these exposures from a prudential perspective, taking the situation of each institution into account.

If the exemption of exposures arising from officially supported export credits is to be maintained it should be limited to the extent necessary, insofar as warranted by Union-wide necessity rather than national preferences, as it constitutes a deviation from the BCBS standards. The automatic exemption of exposures arising from promotional loans from the exposure measure also deviates from the BCBS standards and conflicts with the rationale of the leverage ratio as a non-risk based measure. Further, this automatic exemption is not in line with the EBA recommendations and impedes an efficient comparison of leverage ratios across the market. Finally, the wording of several exemptions, which are often unclear in terms of the conditions to be satisfied, may allow institutions to interpret the exemptions in different ways, possibly resulting in the exemptions having a wider application and not being targeted towards very specific cases.

Amendment 72

Point (115) of Article 1 of the proposed regulation

(Article 430(1) of the CRR)

‘1. Institutions shall report to their competent authorities on the leverage ratio as set out in this Part. Reporting on the leverage ratio shall be submitted on an annual basis by small institutions as defined in Article 430a and, subject to paragraph 2, on an annual basis or more frequently by other institutions.’	‘1. Institutions shall report to their competent authorities on the leverage ratio as set out in this Part. Reporting on the leverage ratio shall be submitted ~~on an annual basis by small institutions as defined in Article 430a and, subject to paragraph 2,~~ on an annual basis or more frequently ~~by other institutions~~.’

<u>*Explanation*</u>

See the explanation for the proposed amendment to Article 99 of the CRR.

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
Amendment 73 (Article 430a of the CRR)	
‘For the purposes of this Part and Articles 13, 99, 100, 394 and 430 the following definitions shall apply: (1) ''large institution'' means an institution that meets any of the following conditions: (a) the institution has been identified as a global Systemically important institution ('G-SII') in accordance with Article 131(1) and (2) of Directive 2013/36/EU ; (b) the institution has been identified as other systemically important institution ('O-SII') in accordance with Article 131(1) and (3) of Directive 2013/36/EU; (c) the institution is, in the Member State where it is established, one of the three largest institutions by total value of assets; […] (4) "small institution" means an institution the value of the assets of which is on average equal to or less than EUR 1.5 billion over the four-year period immediately preceding the current annual disclosure period.’	‘For the purposes of this Part and Articles 13, 99, 100, 394 and 430 the following definitions shall apply: (1) ''large institution'' means an institution that meets any of the following conditions: (a) the institution has been identified as a global ~~S~~**s**ystemically important institution (~~'~~G-SII~~'~~) in accordance with Article 131(1) and (2) of Directive 2013/36/EU ; (b) the institution has been identified as **an** other systemically important institution (~~'~~O-SII~~'~~) in accordance with Article 131(1) and (3) of Directive 2013/36/EU; **(c) the institution is considered significant based on the provisions of Article 6 of Regulation 1024/2013;** (**d**~~c~~) the institution is, in the Member State where it is established, one of the three largest institutions by total value of assets~~;~~ […] (4) "small institution" means an institution the value of the assets of which is on average equal to or less than EUR ~~1.5~~ **1** billion over the four-year period immediately preceding the current annual disclosure period.’
<u>Explanation</u> *The purpose of including an additional condition in the definition of a ‘large institution’ is to fully align the determination of significance for the purposes of disclosure with the SSM framework.* *The threshold for small institutions should be lowered to a EUR 1 billion balance sheet size, as the current proposal of 1.5 billion may be too high.*	

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
Amendment 74 Point (116) of Article 1 of the proposed regulation (Article 438 introductory statement and (b) of the CRR)	
'Institutions shall disclose the following information regarding their compliance with Article 92 of this Regulation and in Article 73 of Directive 2013/36/EU: […] (b) the composition of the additional common equity Tier 1 own funds requirements based on the supervisory review process as referred to in point (a) of Article 104(1) of Directive 2013/36/EU	'Institutions shall disclose the following information regarding their compliance with Article 92 of this Regulation and in Article 73 of Directive 2013/36/EU: […] (b) the composition **in terms of CET 1, AT 1 and T 2** of the additional ~~common equity Tier 1~~ own funds requirements based on the supervisory review process as referred to in point (a) of Article 104(1) of Directive 2013/36/EU;
<u>*Explanation*</u> *It should be clarified that the quality of additional own funds (CET 1/AT 1/T 2) is targeted. Disclosure requirements in relation to Pillar 2 requirements have not gone as far as necessary. Going one step further would help to emphasise the quality of institutions' capital bases.*	
Amendment 75 Point (116) of Article 1 of the proposed regulation (Article 438(i) of the CRR)	
'Institutions shall disclose the following information regarding their compliance with Article 92 of this Regulation and in Article 73 of Directive 2013/36/EU: […] (i) for institutions authorised to use internal models, the hypothetical risk-weighted exposure amounts that would result if the applicable standardised approach was used for the relevant exposures.'	'Institutions shall disclose the following information regarding their compliance with Article 92 of this Regulation and in Article 73 of Directive 2013/36/EU: […] (i) for institutions authorised to use **the** internal models **approach,** the hypothetical risk-weighted exposure amounts that would result if the applicable standardised approach was used for the relevant exposures.'
<u>*Explanation*</u> *The scope of application of Article 438(i) should be clarified, so as to refer to disclosure of information with regard to RWAs as regards market risk only. Hence, an explicit reference to the 'internal models*	

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
approach' should be introduced in paragraph (i) of Article 438. The current wording, which refers to use of 'internal models' in a more general manner, could potentially be interpreted to include a disclosure requirement as regards other types of prudential risks where internal models are used, beyond market risk.	
Amendment 76 Article 458 of the CRR	
'2. Where the authority determined in accordance with paragraph 1 identifies changes in the intensity of macroprudential or systemic risk in the financial system with the potential to have serious negative consequences to the financial system and the real economy in a specific Member State and which that authority considers would better be addressed by means of stricter national measures, it shall notify the European Parliament, the Council, the Commission, the ESRB and EBA of that fact and submit relevant quantitative or qualitative evidence of all of the following: (a) the changes in the intensity of macroprudential or systemic risk; (b) the reasons why such changes could pose a threat to financial stability at national level; (c) a justification of why Articles 124 and 164 of this Regulation and Articles 101, 103, 104, 105, 133, and 136 of Directive 2013/36/EU cannot adequately address the macroprudential or systemic risk identified, taking into account the relative effectiveness of those measures; (d) draft national measures for domestically authorised institutions, or a subset of those institutions, intended to mitigate the changes in the intensity of risk and concerning: (i) the level of own funds laid down in Article 92; (ii) the requirements for large exposures laid	'2. Where the authority determined in accordance with paragraph 1 identifies changes in the intensity of macroprudential or systemic risk in the financial system with the potential to have serious negative consequences to the financial system and the real economy in a specific Member State and which that authority considers would better be addressed by means of stricter national measures, it shall notify the European Parliament, the Council, the Commission, the ESRB and EBA of that fact and submit relevant quantitative or qualitative evidence of all of the following: (a) the changes in the intensity of macroprudential or systemic risk; (b) the reasons why such changes could pose a threat to financial stability at national level; ~~(c) a justification of why Articles 124 and 164 of this Regulation and Articles 101, 103, 104, 105, 133, and 136 of Directive 2013/36/EU cannot adequately address the macroprudential or systemic risk identified, taking into account the relative effectiveness of those measures;~~ (d) draft national measures for domestically authorised institutions, or a subset of those institutions, intended to mitigate the changes in the intensity of risk and concerning: (i) the level of own funds laid down in Article 92; (ii) the requirements for large exposures laid

<table>
<tr><th>Text proposed by the European Commission or current text of the CRR</th><th>Amendments proposed by the ECB[7]</th></tr>
<tr><td>down in Article 392 and Article 395 to 403;
(iii) the public disclosure requirements laid down in Articles 431 to 455;
(iv) the level of the capital conservation buffer laid down in Article 129 of Directive 2013/36/EU;
(v) liquidity requirements laid down in Part Six;
(vi) risk weights for targeting asset bubbles in the residential and commercial property sector; or
(vii) intra financial sector exposures;
(e) an explanation as to why the draft measures are deemed by the authority determined in accordance with paragraph 1 to be suitable, effective and proportionate to address the situation; and
(f) an assessment of the likely positive or negative impact of the draft measures on the internal market based on information which is available to the Member State concerned.'</td><td>down in Article 392 and Article 395 to 403;
(iii) the public disclosure requirements laid down in Articles 431 to 455;
(iv) the level of the capital conservation buffer laid down in Article 129 of Directive 2013/36/EU;
(v) liquidity requirements laid down in Part Six;
(vi) risk weights for targeting asset bubbles in the residential and commercial property sector; or
(vii) intra financial sector exposures;
(e) an explanation as to why the draft measures are deemed by the authority determined in accordance with paragraph 1 to be suitable, effective and proportionate to address the situation;
(f) an assessment of the likely positive or negative impact of the draft measures on the internal market based on information which is available to the Member State concerned; and
(g) an explanation as to how the outcome of the coordination mechanism between national designated authorities and the ECB as set out in Article 5(4) of Council Regulation (EU) No 1024/2013*, have been considered in the draft national measures.
(*) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).'</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The purpose of this amendment is to enhance the efficiency, effectiveness and timeliness of macroprudential policy by simplifying the activation procedure for measures set out in this Article by removing the mandatory sequencing requirements (i.e. the requirement that certain CRR/CRD measures should be considered first and that authorities should justify why those measures cannot adequately address macroprudential or systemic risk). In line with the Commission's proposal, the amendment</td></tr>
</table>

<table>
<tr><th>Text proposed by the European Commission or current text of the CRR</th><th>Amendments proposed by the ECB[7]</th></tr>
<tr><td colspan="2">clarifies that Pillar 2 measures should not be used for macroprudential purposes. Therefore the references to Articles 101, 103, 104 and 105 should be removed.
Furthermore, as regards measures under Articles 124 and 164 of the CRR (real-estate risk weights and loss given default (LGD floors)), the CRR does not currently set a mandatory sequencing requirement. Therefore, the removal of the mandatory sequencing requirement from Article 458 would ensure the equal treatment of CRR measures from this perspective. It should be noted that the removal of this requirement does not impact on the notification procedures and the role of Union authorities in the authorisation process.
In addition, recital 24 of Regulation (EU) No 1024/2013 states as follows: 'The provisions in this Regulation on measures aimed at addressing systemic or macroprudential risk are without prejudice to any coordination procedures provided for in other acts of Union law. National competent authorities or national designated authorities and the ECB shall act in respect of any coordination procedure provided for in such acts after having followed the procedures provided for in this Regulation.' Therefore, in order to ensure consistency between Regulation (EU) No 1024/2013 and the CRD it should be clarified in the CRD that the outcome of the coordination mechanism between national designated authorities and the ECB should be considered when notifications of draft Article 458 measures are submitted to the European Parliament, the Council, the Commission, the European Systemic Risk Board and the EBA.
At the same time, the revised framework should avoid facilitating ring-fencing decisions that could increase the risk of market fragmentation and impediments to banking system consolidation.</td></tr>
<tr><td colspan="2">Amendment 77
Point (119) of Article 1 of the proposed regulation (complete redraft)
(Article 473a of the CRR)</td></tr>
<tr><td>'1. Until [date of application of this Article + 5 years] institutions that prepare their accounts in conformity with the international accounting standards adopted in accordance with the procedure laid down in Article 6(2) of Regulation (EC) No 1606/2002 may add to their Common Equity Tier 1 capital the amount calculated in accordance with paragraph 2 of this Article multiplied by the applicable factor laid down in paragraph 3.
2. The amount referred to in paragraph 1 shall be calculated as the twelve month expected credit losses determined in accordance with paragraph</td><td>'1. An institution that effects the valuation of assets and off-balance sheet items and the determination of own funds in accordance with the international accounting standards as applicable under Regulation (EC) No 1606/2002 shall calculate its "initial IFRS 9 impact" as the higher of zero and the difference between its Common Equity Tier 1 capital if IFRS 9 was not yet applicable and its Common Equity Tier 1 capital resulting from first applying IFRS 9 as applicable according to Regulation (EC) No 1606/2002 as amended by Commission Regulation (EC) No 2016/2067. The applicable</td></tr>
</table>

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
5.5.5 of Commission Regulation (EU) No …. / 2016 (32) and the amount of the loss allowance for financial instruments equal to the lifetime expected losses determined in accordance with paragraph 5.5.3 of Commission Regulation (EU) No …. / 2016 (1). 3. In calculating the amount referred to in paragraph 1, the following factors apply: (a) 1 in the period from [date of application of this Article] to [date of application of this Article + 1 year - 1 day]; (b) 0,8 in the period from [date of application of this Article + 1 year] to [date of application of this Article + 2 years - 1 day]; (c) 0,6 in the period from [date of application of this Article +2 years] to [date of application of this Article +3 years - 1 day]; (d) 0,4 in the period from [date of application of this Article +3 years] to [date of application of this Article +4 years - 1 day]; (e) 0,2 in the period from [date of application of this Article +4 years] to [date of application of this Article +5 years - 1 day]. Institutions shall include in their own funds disclosures the amount added to their Common Equity Tier 1 capital in accordance with paragraph 1.'	**IFRS-9-adjustment amount shall be:** **(a) Four-fifths of the institution's initial IFRS 9 impact during the period from 1 January 2018 to 31 December 2018;** **(b) Three-fifths of the institution's initial IFRS 9 impact during the period from 1 January 2019 to 31 December 2019;** **(c) Two-fifths of the institution's initial IFRS 9 impact during the period from 1 January 2020 to 31 December 2020;** **(d) One-fifth of the institution's initial IFRS 9 impact during the period from 1 January 2021 to 31 December 2021.** **The applicable IFRS-9-adjustment scalar shall be calculated as the difference between 1 and the ratio of the applicable IFRS-9-adjustment amount to total credit risk adjustments of the institution.** **2. In derogation from Article 50, during the period from 1 January 2018 to 31 December 2021, the Common Equity Tier 1 capital of an institution shall be increased by the applicable IFRS-9-adjustment amount.** **3. In derogation from Article 62, during the period from 1 January 2018 to [31 December 2021], the amounts according to points (c) and (d) of Article 62 shall be calculated based on multiplying credit risk adjustments by the applicable IFRS-9-adjustment scalar.** **4. In derogation from Article 111, during the period from 1 January 2018 to 31 December 2021, the exposure value according to Article 111 shall be calculated based on multiplying specific credit risk adjustments by the applicable IFRS-9-adjustment scalar.** **5. During the period from 1 January 2018 to 31**

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
	December 2021, paragraph 3 shall apply for the definition of "exposures" according to Article 389 for the purposes of Part Four on large exposures. **6. During the period from 1 January 2018 to 31 December 2021, paragraph 3 shall apply for calculating exposure values for the leverage ratio according to paragraph (5)(a) or paragraph (10) of Article 429.** **7, In derogation from Article 4(1)(106), during the period from 1 January 2018 to 31 December 2022, the amount of deferred tax assets under the applicable accounting framework shall be multiplied by the applicable IFRS-9-adjustment scalar.'** **8. In addition to the disclosure of information required by Part Eight that results from the application of this Article, institutions shall disclose the values of own funds, the Common Equity Tier 1 capital ratio, the Tier 1 capital ratio, the total capital ratio and the leverage ratio that would result if this Article does not apply.'**

Explanation

The transitional arrangements for IFRS 9 should be adjusted to Option 1 in the Basel Consultative Document, for the period starting in 1 January 2018, with the length of the period being aligned to the Basel standards[15]*.*

Detailed explanations per paragraph:

1. All institutions applying IFRS 9 – either as their applicable accounting framework or in accordance with Article 24(2) of the CRR – are required to identify the initial CET 1 reduction ('initial IFRS 9 impact') as the difference in CET 1 capital resulting from switching from IAS 39 to IFRS 9, which is the standard now adopted in the Union. The percentage of this initial CET 1 reduction when added back to CET 1 capital will be, for a three-year transition period, 75 % in the first year, 50 % in the second year and 25 % in the third year following the entry into force of IFRS 9. For a five-year transition period, the percentage of this

15 Basel Committee on Banking Supervision, Regulatory treatment of accounting provisions – interim approach and transitional arrangements, March 2017, available at www.bis.org.

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]

initial CET 1 reduction added back to CET 1 capital will be five-sixths in the first year, four-sixths in the second year, three-sixths in the third year, two-sixths in the fourth year and one-sixth in the fifth year following the entry into force of IFRS 9. The transition period shall start at the day when IFRS 9 becomes applicable; the proposed dates are based on the assumption that this will be the 1 January 2018.

2. Adding an amount of provisions back to CET 1 capital during the transitional period requires a corresponding reduction in Tier 2 capital, which should be limited according to the extent to which general provisions (using the standardised approach for credit risk), or excess provisions (using the IRB approach) are included in Tier 2 capital. Calculating the amount to be added back to CET 1 capital based on the expected loss amounts at the respective reporting date would result in a general phase-in for IFRS 9 provisions during the transition period, including for new provisions made after Day 1 (dynamic amount). This would effectively act as a prudential filter, thus delaying the full application of IFRS 9, which conflicts with the very purpose of applying IFRS 9 from 1 January 2018, i.e. to address the 'too-little-too-late' issue of incurred loss accounting. This issue was further amplified by applying a factor of 1 in 2018, which would add back 100 % of the expected credit loss amounts, thus effectively delaying the implementation of IFRS9 completely by a full year.

For these reasons, transitional measures should be limited to giving banks additional time for coping with the initial impact on regulatory CET 1 capital when switching to IFRS 9. This requires limiting the phase-in to the initial CET 1 reduction at Day 1 (static amount) and limiting the add-back already in the first year to a certain percentage of the total amount of expected loss amounts. For simplicity, this should be a linear phase-in over the years of the transitional period for the amount by which the CET 1 capital of an institution is initially reduced when switching to IFRS 9.

Moreover, it would be preferable to only apply the phase-in (partial add-back to Tier 1) to the initial CET 1 reduction at Day 1 (static amount) rather than for the expected loss amounts calculated under IFRS 9 at the respective reporting date in the transition period (dynamic amount). In the event of a three-year transition period, in the first year 75 % of this initial CET 1 reduction should be added back to CET 1 capital, in the second year 50 %, and in the third year 25 %. In the event of a five-year transition period, in the first year five-sixths (about 83.33 %) of this initial CET 1 reduction should be added back to CET 1 capital, in the second year four-sixths, in the third year three-sixths, in the fourth year two-sixths, and in the fifth year one-sixth.

Adding a certain amount back to CET 1 capital requires corresponding adjustments in all relevant parts of the CRR. Without such corrections, the amount added back to CET 1 capital would be treated as if the CET 1 capital were still reduced. This would result in double counting in the capital calculation by including additional amounts in Tier 2 capital, which would also lead to the retention of non-deducted deferred tax asset (DTA) amounts, and to an unjustified reduction in exposure values under the standardised approach for credit risk, for large exposure limits and for the leverage ratio.

Corrections also need to be applied to DTAs, by reducing the amount of DTAs in relation to the increase in CET 1 capital that results from adding a certain amount back.

<table>
<tr><th>Text proposed by the European Commission or current text of the CRR</th><th>Amendments proposed by the ECB[7]</th></tr>
<tr><td colspan="2">3. The total exposure value for exposures under the standardised approach for credit risk needs to be increased by the portion of the amount added back to CET 1 capital that relates to specific credit risk adjustments by which the exposure values were reduced. This transaction may be operationalised as a scaling factor reducing the specific credit risk adjustments for the exposure value. This downwards-scaling factor is determined by the amount added back in relation to total provisions under IFRS 9.

4. The adjustment to the exposure values calculated in accordance with the standardised approach for credit risk should also apply to large exposures, because the add-back to CET 1 capital increases eligible own funds for the large exposure framework.

5. The exposure measure for the leverage ratio needs to be increased by the portion of the amount added back to CET 1 capital that relates to specific credit risk adjustments by which these exposure values are reduced, which may also be operationalised by the scaling factor.

It is recommended that the transitional measures are drafted in such a way that they are simple and easy for institutions, supervisors and the markets to understand. The proposed amendments to the CRR leave discretion to institutions to apply the phase-in arrangements. Leaving such discretion to individual institutions risks hampering the market's ability to compare capital ratios, predict restrictions on the MDA and understand SREP capital requirements. For these reasons, the transitional measures should be mandatory, or at least any discretion should be at the level of the competent authorities rather than supervised institutions.</td></tr>
<tr><td colspan="2" align="center">Amendment 78
Article 479(1)(e) of the CRR (new)</td></tr>
<tr><td>No text</td><td>'(e) the items do not qualify because the subsidiary is an institution that has been granted a derogation from the application of prudential requirements on an individual basis before the date of entry into force of this Regulation.'</td></tr>
<tr><td colspan="2"> <u>Explanation</u> The new text provides for the partial recognition of minority interests arising from institutions that have a derogation from the application of the capital requirements that was granted before the entry into force of the CRR.</td></tr>
</table>

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
Amendment 79 Article 493(3)(c) of the CRR	
c) exposures, including participations or other kinds of holdings, incurred by an institution to its parent undertaking, to other subsidiaries of that parent undertaking or to its own subsidiaries, in so far as those undertakings are covered by the supervision on a consolidated basis to which the institution itself is subject, in accordance with this Regulation, Directive 2002/87/EC or with equivalent standards in force in a third country;' '	c) exposures, including participations or other kinds of holdings, incurred by an institution to its parent undertaking, to other subsidiaries of that parent undertaking or to its own subsidiaries, in so far as those undertakings **are established in a Member State or in a country applying equivalent prudential and supervisory requirements and** are covered by the supervision on a consolidated basis to which the institution itself is subject, in accordance with this Regulation, Directive 2002/87/EC or with equivalent standards in force in a third country;'

Explanation

The current wording of the CRR includes in the intra-group large exposures exemption all the entities included in the perimeter of prudential consolidation according to the CRR, FICOD and equivalent third country standards, regardless of whether they are established in equivalent or non-equivalent third countries. In this connection, the current text of the CRR appears to show several inconsistencies, for instance, with the Basel Core Principles (see Principle 12), other CRR provisions (e.g. Article 391) and the provisions in the CRD on consolidated supervision (see Chapter 3) and raises overall prudential concerns. These inconsistencies result in the exemption also applying to entities established in non-equivalent third countries, as long as the third country subsidiaries of the Union parent, or the sister companies of a Union institution, are prudentially consolidated according to the CRR, the FICOD or equivalent third country criteria (applicable to the parent in third countries).

ECB staff considers that provided that these subsidiaries and sister companies are prudentially consolidated, the equivalence of the jurisdiction of establishment of the subsidiaries or sister companies is irrelevant when applying Article 493(3)(c). The only way to address this apparent inconsistency would be to deconsolidate certain subsidiaries under the currently applicable framework on prudential consolidation (see Articles 11 and 18 of the CRR and also Article 19(2)(a) of the CRR as regards third country subsidiaries). However, that would lower prudential requirements at the consolidated level.

This amendment aims to address these inconsistencies by excluding from the scope of the exemption the subsidiaries or sister companies of Union credit institutions established in non-equivalent third countries.

Finally, appropriate transitional arrangements for the implementation of the cross-border capital waiver should be put in place, taking into account the planned further progress on the banking union.

Text proposed by the European Commission or current text of the CRR	**Amendments proposed by the ECB[7]**
Amendment 80 Point (127) of Article 1 of the proposed regulation (Article 501b(1), (3) and (4) of the CRR)	
'1. Until [date of application + 3 years], institutions that use the approaches set out in Chapters 1a and 1b, Title IV, Part Three to calculate the own funds requirement for market risks shall multiply their own funds requirements for market risks calculated under these approaches by a factor of 65%. […]' 3. Within the three years after the date of application of the approaches set out in Chapters 1a and 1b, Title IV, Part Three , the Commission shall be empowered to adopt a delegated act in accordance with Article 462 of this Regulation to prolong the application of the treatment referred to in paragraph 1 or amend the factor referred to in that paragraph, if considered appropriate and taking into account the report referred to in paragraph 2, international regulatory developments and the specificities of financial and capital markets in the Union. 4. In the absence of adoption of the delegated act referred to in the previous subparagraph within the specified timeframe, the treatment set out in paragraph 1 shall cease to apply.	'1. ~~Until [date of application + 3 years],~~ Institutions that use the approaches set out in Chapters 1a and 1b, Title IV, Part Three to calculate the own funds requirement for market risks shall multiply their own funds requirements for market risks calculated under these approaches by a factor **which accounts for:** **(a) 65 % in the first year from [date of application];** **(b) 75 % in the second year from [date of application];** **(c) 85 % in the third year from [date of application]; and** **(d) 100 % from the fourth year and in any subsequent years.** **1a. Institutions that use the approaches set out in Chapters 2, 3 and 4, Title IV, Part Three to calculate the own funds requirement for market risks shall multiply their own funds requirements for market risks calculated under these approaches by a factor which accounts for:** **(a) 100 % in first year from [date of application];** **(b) 115 %, in the second year from [date of application];** **(c) 130 % in the third year from [date of application]; and** **(d) 150 % from the fourth year and in any subsequent years from [date of application].** **1b. The total capital requirements for market risk of the institutions under the approaches in Chapters 1a and 1b calculated with the**

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
	recalibration factors in paragraph 1 of this Article shall never be lower than the existing market risk capital requirements of the institution at the entry into force of this Regulation until the recalibration factor reaches 100 %. Institutions shall have the option not to apply the requirement mentioned in the first sentence of this paragraph, but shall in turn apply a 100 % calibration factor for the approaches in Chapters 1a and 1b, which shall be irrevocable. […]' 3. Within the three years after the date of application of the approaches set out in Chapters 1a and 1b, Title IV, Part Three , the Commission shall be empowered to adopt a delegated act in accordance with Article 462 of this Regulation ~~to prolong the application of the treatment referred to in paragraph 1 or amend the factor referred to in that paragraph, if considered appropriate and~~ taking into account the report referred to in paragraph 2, international regulatory developments and the specificities of financial and capital markets in the Union. ~~4. In the absence of adoption of the delegated act referred to in the previous subparagraph within the specified timeframe, the treatment set out in paragraph 1 shall cease to apply.~~

Explanation

The FRTB, as calibrated by the Basel standards, results on average in a higher market risk for own funds requirements. As a result, the Commission proposal for the implementation of the FRTB into Union law sets a transitional horizontal recalibration of own funds requirement for market risk calculated under the FRTB approaches, (the new IMA and the new SA). This recalibration is set at 65 % of the Basel calibration during the three years following the application date for the new approaches. Moreover, a review clause would enable the Commission to prolong the recalibration via a delegated act.

However, the Commission's proposal would need to be further refined in a number of areas. In particular, the following policy objectives should be pursued when designing this transitional treatment:

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]

1. *The proposal should provide certainty and sufficient time for banks to adapt, whilst ensuring that the framework converges to the Basel calibration. This would be achieved by making the recalibration temporary and gradually phasing it out according to a clear and predefined calendar.*
2. *During the transitional period, the proposal must not lead to the computation of unforeseeably low levels of market risk for own funds requirements. In particular, levels that go below the current requirements for some institutions must be avoided.*
3. *The proposal must ensure an ongoing consistency in the level of own funds requirements between standardised approaches.*

In order to meet these objectives, ECB staff would suggest the following design for the transitional arrangement:

- *To phase-out the abovementioned recalibration of the new approaches in a way that it accounts for 65 % in the first year (from the date of application), 75 % in the second year, 85 % in the third year and 100 % from the fourth year onwards.*
- *To introduce a floor for capital requirements calculated under the new approaches during the phase-out period. This floor would be calculated only once for the whole period and would be equal to the amount of market risk capital requirements (according to the current approaches) at the date of entry into force of the new approaches. This floor would be in force during the first three years following the date of application.*
  However, in order to avoid the situation in which, for example, banks that actually reduce their trading portfolio are unduly penalised by this floor, an option is given for banks not to apply this floor, on condition that they may no longer benefit from the recalibration of the new approaches, i.e. they must apply a 100 % factor from that moment onwards.
- *To recalibrate upwards the current standardised approach, to ensure that the proportion between both standardised approaches in terms of average level of capital requirements is maintained, the percentages applicable to the current SA would then be 115 %, 130 %, and 150 % respectively during the first, second and third years.*

The subsequent review of the calibration by the Commission referred to in Article 501b(3) would no longer be needed in its current form, since it only relates to the amendment of the (65 %) factor. However, a delegated act to review the calibration would still be required, in order to be able to incorporate any future changes to the calibration that might be agreed in Basel.

Amendment 81

Point (128) of Article 1 of the proposed regulation

(Article 507(5) of the CRR)

‘5. The Commission is empowered to adopt a	‘5. The Commission is empowered to adopt a

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
delegated act in accordance with Article 462 […]. In the absence of adoption of the delegated act referred to in the first subparagraph or of a confirmation by the Commission of the accuracy of the treatment of derivative contracts listed in Annex II and credit derivatives for the calculation of the net stable funding ratio by [three years after the date of application of the net stable funding ratio as set out in Title IV of Part Six], the requirement set out in Article 428x(2) of this Regulation shall apply for all institutions and all derivatives contracts listed in Annex II and credit derivatives regardless of their characteristics, and the provisions of Article 428u(2) and Article 428x(3) and (4) shall cease to apply.'	delegated act in accordance with Article 462 […]. In the absence of adoption of the delegated act referred to in the first subparagraph or of a confirmation by the Commission of the accuracy of the treatment of derivative contracts listed in Annex II and credit derivatives for the calculation of the net stable funding ratio by [three years after the date of application of the net stable funding ratio as set out in Title IV of Part Six], the requirement set out in Article 428x(2) of this Regulation shall **be maintained.** ~~apply for all institutions and all derivatives contracts listed in Annex II and credit derivatives regardless of their characteristics, and the provisions of Article 428u(2) and Article 428x(3) and (4) shall cease to apply.~~'
<u>*Explanation*</u> *This drafting suggestion is necessary to take into consideration the fact that the treatment during the transitional period would be in line with the Basel standards, as recommended by ECB staff in the proposed amendment to Article 428x(2) of the CRR.*	
Amendment 82 Point (129) of Article 1 of the proposed regulation (Article 510(6) of the CRR)	
'6. EBA shall monitor the amount of stable funding required to cover the funding risk linked to secured lending transactions and capital market-driven transactions, including to the assets received or given in these transactions, and to unsecured transactions with a residual maturity of less than six months with financial customers and report to the Commission on the appropriateness of this treatment by [two years after the date of application of the net stable funding ratio as set out in Title IV of Part Six]. This report shall at least assess: […]	'6. EBA shall monitor the amount of stable funding required to cover the funding risk linked to secured lending transactions and capital market-driven transactions, including to the assets received or given in these transactions. **In addition, the EBA shall monitor the amount of stable funding required to cover the funding risk linked to** unsecured transactions with a residual maturity of less than six months with financial customers. **The EBA shall** report to the Commission on the appropriateness of **these treatments** by [two years after the date of application of the net stable funding ratio as set out in Title IV of Part Six]. This

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
(e) the impact of the introduction of higher or lower required stable funding factors for secured lending transactions and capital market-driven transactions, in particular with a residual maturity of less than six months with financial customers, on the market liquidity of assets received as collateral in these transactions, in particular of sovereign and corporate bonds; (f) the impact of the proposed changes on the amount of stable funding required for those institutions' transactions, in particular for secured lending and capital market-driven transactions with a residual maturity of less than six months with financial customers where sovereign bonds are received as collateral in these transactions.'	report shall at least assess: […] (e) the impact of the introduction of higher or lower required stable funding factors for secured lending transactions and capital market-driven transactions, in particular ~~with a residual maturity of less than six months~~ with financial customers, on the market liquidity of assets received as collateral in these transactions, in particular of sovereign and corporate bonds; (f) the impact of the proposed changes on the amount of stable funding required for those institutions' transactions, in particular for secured lending and capital market-driven transactions ~~with a residual maturity of less than six months~~ with financial customers where sovereign bonds are received as collateral in these transactions.'

<u>Explanation</u>

ECB staff recommends slightly revising this paragraph to ensure that the mandate covers a more general review of the secured lending and capital market-driven transactions, and not only those with a residual maturity of less than six months. This is considered to be necessary because:

- the RSF charges for certain reverse repos with a maturity of between six months and one year appear unnecessarily high, while the RSF charges for repos having the same term appear insufficient (i.e. matched book repo/reverse repos in this bucket are NSFR neutral, while shorter-term matched transactions incur a net NSFR charge, even if they have a lower funding risk);

- the European Commission has already deviated from the Basel III NSFR framework regarding the RSF factors for reverse repos with a maturity of less than six months and, while it may be justifiable to lower the RSF factors, from 10 % to 15 %, for reverse repos against Level 1 high quality liquid assets in accordance with Article 10 of Delegated Regulation (EU) 2015/61, excluding the extremely high quality covered bonds referred to in point (f) of Article 10(1) of that Delegated Regulation.

ECB staff considers that (a) it is not appropriate to undertake this change at this time and deviate from the Basel standard, especially given the fact that no quantitative analysis has been undertaken to date; and (b) it is unclear whether lowering the RSF to 10 % from 15 % for reverse repo against all other collateral is appropriate. Instead, such reviews should be undertaken at Basel level and after in depth assessment.

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
Amendment 83 Point (129) of Article 1 of the proposed regulation (Article 510(7) of the CRR)	
'7. The Commission is empowered to adopt a delegated act in accordance with Article 462 […]. In the absence of adoption of the delegated act referred to in the first subparagraph or of a confirmation by the Commission of the accuracy of the treatment of secured lending transactions and capital market-driven transactions, including of the assets received or given in these transactions, and of unsecured transactions with a residual maturity of less than six months with financial customers by [three years after the date of application of the net stable funding ratio as set out in Title IV of Part Six], the required stable funding factors applied to the transactions referred to in Article point (b) of 428s and in points (a) and (b) of Article 428u shall be raised to 10% and 15% respectively.'	'7. The Commission is empowered to adopt a delegated act in accordance with Article 462 […]. In the absence of adoption of the delegated act referred to in the first subparagraph or of a confirmation by the Commission of the accuracy of the treatment of secured lending transactions and capital market-driven transactions, including of the assets received or given in these transactions, and of unsecured transactions with a residual maturity of less than six months with financial customers by [three years after the date of application of the net stable funding ratio as set out in Title IV of Part Six], the required stable funding factors applied to the transactions referred to in **point (a) of Article 428u(1) and in Article 428w shall be maintained.'** ~~point (b) of Article 428s and in points (a) and (b) of Article 428u shall be raised to 10% and 15% respectively.'~~
<u>*Explanation*</u> *See the explanation provided for the proposed amendment to Article 510(6) of the CRR.*	
Amendment 84 Article 513 of the CRR	
1. By 30 June 2014, the Commission shall, after consulting the ESRB and EBA, review whether the macroprudential rules contained in this Regulation and Directive 2013/36/EU are sufficient to mitigate systemic risks in sectors, regions and Member States including assessing: (a) whether the current macroprudential tools in this Regulation and Directive 2013/36/EU are effective, efficient and transparent;	1. By 30 June **2019**, **and every three years thereafter,** the Commission shall, after consulting the ESRB and EBA, review whether the macroprudential rules contained in this Regulation and Directive 2013/36/EU are sufficient to mitigate systemic risks in sectors, regions and Member States including assessing: (a) whether the current macroprudential tools in this Regulation and Directive 2013/36/EU are

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
(b) whether the coverage and the possible degrees of overlap between different macroprudential tools for targeting similar risks in this Regulation and Directive 2013/36/EU are adequate and, if appropriate, propose new macroprudential rules; (c) how internationally agreed standards for systemic institutions interacts with the provisions in this Regulation and Directive 2013/36/EU and, if appropriate, propose new rules taking into account those internationally agreed standards. 2. By 31 December 2014, the Commission shall, on the basis of the consultation with the ESRB and EBA, report to the European Parliament and the Council on the assessment referred to in paragraph 1 and, where appropriate, submit a legislative proposal to the European Parliament and the Council.	effective, efficient and transparent; (b) whether the coverage and the possible degrees of overlap between different macroprudential tools for targeting similar risks in this Regulation and Directive 2013/36/EU are adequate and, if appropriate, propose new macroprudential rules; (c) how internationally agreed standards for systemic institutions interacts with the provisions in this Regulation and Directive 2013/36/EU and, if appropriate, propose new rules taking into account those internationally agreed standards. 2. By 31 December ~~2014~~**2019**, **and every three years thereafter,** the Commission shall, on the basis of the consultation with the ESRB and EBA, report to the European Parliament and the Council on the assessment referred to in paragraph 1 and, where appropriate, submit a legislative proposal to the European Parliament and the Council.
<u>Explanation</u> *In August 2016, the Commission launched a public consultation on a review of the Union macroprudential framework. The ECB made a contribution to the consultation[16] and considers it to be of paramount importance that appropriate legislative measures are taken with the aim of ensuring that the Union macroprudential framework is effective and efficient. Against this background, a regular review of the framework at three-year intervals is proposed with the first deadline for legislative proposals being set at 31 December 2019.*	
Amendment 85 Article 3(2) of the proposed regulation	
‘2. This Regulation shall apply from [two years after date of entry into force], with the following exceptions: (a) the provisions on the introduction of the new requirements for own funds and eligible liabilities in	‘2. This Regulation shall apply from [two years after date of entry into force], with the following exceptions: (a) the provisions on the introduction of the new requirements for own funds and eligible liabilities in

16 ECB contribution to the European Commission’s consultation on the review of the EU macroprudential policy framework, available at on the ECB’s website at www.ecb.europa.eu

Text proposed by the European Commission or current text of the CRR	Amendments proposed by the ECB[7]
points (4)(b), (7) to (9), and (12) to (40), which shall apply from 1 January 2019; (b) the provisions in point (119) concerning amendments to Article 473a of Regulation (EU) No 575/2013, which shall apply from the date of entry into force of this Regulation.'	points (4)(b), (7) to (9), and (12) to (40), which shall apply from 1 January 2019; (b) the provisions in point (119) concerning amendments to Article 473a of Regulation (EU) No 575/2013, which shall apply from the date of entry into force of this Regulation. **(c) the provisions on the introduction of the new own fund requirements for market risk in points (47) to (51) and (83) to (88), which shall apply from [three years after date of entry into force] of this Regulation.**'

Explanation

Two years may not leave enough time for institutions to demonstrate their compliance with the quantitative requirements of the new internal model approach for market risks (P&L attribution and backtesting) and amend their initial choice of internal models if it turns out to be inappropriate. Moreover a two-year period may not be sufficient for supervisors to properly assess and approve market risk models given that the specification of some important aspects of the internal models approach will only take place through RTS well after the legislation enters into force. In any case, relevant developments at international level should be taken into account when finalising the content and determining the date of entry into force of the new market risk rules.

For these reasons, it would be advisable to lengthen the implementation phase from two years to three years. In order to preserve a level playing field, this lengthening should not be limited to institutions that plan to use the new internal model approach for market risk, but should also apply to institutions that do not plan to use such an approach.