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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Strengthening of the Banking Union / Risk-reduction measures - Presidency Progress Report

Delegations will find in annex the legal text agreed "ad referendum" between the Presidency and the European Parliament as a result of the 21 and 22 November trilogues.

1 MREL calibration and subordination benchmark

Art. 45b BRRD (Line 253-358):

"Article 45b
Eligible liabilities for resolution entities

1. Eligible liabilities shall be included in the amount of own funds and eligible liabilities of resolution entities only where they satisfy the conditions referred to in Article 72a, except for point (d) of Article 72b(2) of Regulation (EU) No 575/2013.

By way of derogation from the first subparagraph, where this Directive refers to the requirements in Article 92a or Article 92b of Regulation (EU) No 575/2013, eligible liabilities for the purpose of those Articles shall consist of eligible liabilities as defined in Article 72k of Regulation (EU) No 575/2013 and determined in accordance with Chapter 5a of Part Two, Title I of that Regulation.

2. Liabilities that arise from debt instruments with embedded derivatives, such as structured notes, that meet the conditions of the first subparagraph of paragraph 1, except for point (l) of Article 72a(2) of Regulation (EU) No 575/2013, shall be included in the amount of own funds and eligible liabilities only where one of the following conditions is met:

(a) the principal amount of the liability arising from the debt instrument is known in advance at the time of issuance, is fixed or increasing and not affected by an embedded derivative feature and the amount of the liability arising from the debt instrument and from the embedded derivative can be valued daily by reference to an active, liquid two-way market for an equivalent instrument without credit risk in line with Articles 104 and 105 of Regulation (EU) No 575/2013, or

(b) the debt instrument includes a contractual term that specifies that the value of the claim in the events of insolvency and of resolution of the issuer is fixed, and is no more than the initially paid up amount of the liability.

Debt instruments referred to in the first subparagraph, including their embedded derivatives, shall not be subject to any netting agreement and their valuation shall not be subject to Article 49(3).

The liabilities referred to in the first subparagraph shall only be included in the amount of own funds and eligible liabilities for the part that corresponds to the principal amount referred to in point (a) or the fixed amount referred to in point (b) of that subparagraph.

2a. Liabilities issued by a subsidiary established in the Union that is part of the same resolution group as the resolution entity to an existing shareholder that is not part of the same resolution group shall be included in the amount of own funds and eligible liabilities of resolution entities provided that all of the following conditions are met:

a) they are issued in accordance with Article 45g(3)(a);

b) the exercise of the power of write-down or convert in relation to such liabilities in accordance with Articles 59 or 62 does not affect the control of the subsidiary by the resolution entity;

c) they do not exceed an amount determined by subtracting the amount referred to in point (i) from the amount referred to in point (ii):

i. the sum of the liabilities issued to and bought by the resolution entity either directly or indirectly through other entities in the same resolution group and the amount of own funds issued in accordance with Article 45g(3)(b);

ii. the amount required in accordance with Article 45g(1).

3. Without prejudice to the minimum requirement in Article 45c(3a) and Article 45d(1)(a), resolution authorities shall ensure that a part of the requirement referred to in Article 45f equal to 8% of the total liabilities, including own funds, shall be met by resolution entities that are GSIIs or resolution entities subject to Article 45c(3a) and (3b) with own funds and instruments that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 except for paragraphs (3) to (5) of Article 72b of that Regulation. The resolution authority may permit that a level lower than 8% of the total liabilities, including own funds, but higher than the amount resulting from the application of the formula (1-X1/X2) x8% of the total liabilities, including own funds, shall be met by resolution entities that are GSIIs or resolution entities subject to Article 45c(3a) and (3b) with own funds and instruments that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 except for paragraphs (3) to (5) of Article 72b of that Regulation, provided that conditions (a), (b) and (c) of Article 72b(3) of Regulation (EU) No 575/2013 are met, where, respecting the limit of the proportion of the reduction possible under Article 72b (3) of Regulation No 575/2013:

X1 = 3.5% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

X2 = amount resulting from the sum of (i) 18% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and (ii) the requirement referred to in Article 128(6) of Directive 2013/36/EU.

Where, for resolution entities subject to Article 45c(3a), the application of the previous subparagraph leads to a requirement above 27% of the total risk exposure amount, the resolution authority shall limit, for the entity concerned, the part of the requirement referred to in Article 45f which shall be met with own funds and instruments that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 except for paragraphs (3) to (5) of Article 72b of that Regulation to an amount equal to 27% of the total risk exposure amount if the resolution authority has assessed, taking also into account the risk of disproportionate impact on the business model of the entity concerned, that

(a) access to the resolution financing arrangement is not considered in the resolution plan to be an option for resolving the entity in question, [and]

(b) where point (a) does not apply, the requirement referred to in Article 45f allows the resolution entity to meet the requirements in Article 44(5) or 44(8) as applicable.

(1) For resolution entities subject to Article 45c (3b), the previous subparagraph does not apply.

4. For resolution entities that are neither G-SIIs nor resolution entities subject to Article 45c(3a) and (3b), the resolution authority may decide that a part of the requirement referred to in Article 45f up to the higher of 8% of the total liabilities, including own funds, of the entity or the formula referred to in paragraph 6 shall be met with own funds and instruments that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 except for paragraphs (3) to (5) of Article 72b of that Regulation provided that the following conditions are met:

(a) non-subordinated liabilities referred to in the first and second paragraphs have the same priority ranking in the national insolvency hierarchy as certain liabilities that are excluded from the application of the write-down or conversion powers in accordance with Article 44(2) or Article 44(3);

(b) the risk that as a result of a planned application of write-down and conversion powers to non-subordinated liabilities that are not excluded from the application of the write-down or conversion powers in accordance with Article 44(2) or Article 44(3), creditors of claims arising from those liabilities incur greater losses than they would incur in a winding up under normal insolvency proceedings.

(c) the amount of subordinated liabilities does not exceed the amount necessary to ensure that creditors referred to in point (b) shall not incur losses above the level of losses that they would otherwise have incurred in a winding up under normal insolvency proceedings.

Where the resolution authority determines that, within a class of liabilities which includes eligible liabilities, the amount of liabilities that are reasonably likely to be excluded from the application of the write-down or conversion powers in accordance with Article 44(2) or Article 44(3), totals more than 10% of that class, it shall assess the risk referred to in point (b) of the second subparagraph.

5. For the purposes of paragraphs 3 and 4, derivative liabilities shall be included in total liabilities on the basis that full recognition is given to counterparty netting rights.

Own funds of an entity used to comply with the requirement referred to in Article 128(6) of Directive 2013/36/EU shall be eligible to comply with requirement referred to in paragraphs 3 and 4.

6. By derogation from paragraph 3, the resolution authority may decide that the requirement referred to in Article 45f shall be met by resolution entities that are GSIIs or resolution entities subject to Article 45c(3a) or (3b) with instruments that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 except for paragraphs (3) to (5) of Article 72b of that Regulation to the extent where the sum of these instruments and own funds of an entity due to its obligation to comply with the requirements referred to in Article 128(6) of Directive 2013/36/EU, Article 92a of Regulation (EU) No 575/2013, Article 45c(3a), and Article 45f does not exceed the higher of 8% of total liabilities, including own funds, of the entity or the amount resulting from the application of the formula Ax2+Bx2+C, where A, B and C are the following amounts:

A= amount resulting from the requirement referred to in Article 92(1)(c) of Regulation (EU) No 575/2013 (Pillar 1)

B= amount resulting from the requirement referred to in Article 104a of Directive 2013/36/EU (Pillar 2R)

C= amount resulting from the requirement referred to in Article 128(6) of Directive 2013/36/EU (combined capital buffer requirement).

7. Resolution authorities may exercise the power referred to in paragraph 6 on the resolution entities that are G-SIIs or subject to Article 45c(3a) or (3b) that meet one of the conditions below, and as long as the number of identified resolution entities does not exceed 30% of all resolution entities that are G-SIIs or subject to Article 45c(3a) or (3b) for which the resolution authority determines the requirement referred to in Article 45f. The conditions shall be considered by resolution authorities as follows:

(a) where substantive impediments to resolvability have been identified in the preceding resolvability assessment and:

(i) no remedial action have been taken following the application of the powers referred to in Article 17 (5) in the timeline required by the resolution authority, or

(ii) the identified substantive impediment cannot be addressed by any of the powers referred to in Article 17 (5), and the exercise of the power referred to in paragraph 6 would partially or fully compensate for the negative impact of the impediment on resolvability, or

(b) the resolution authority considers that the feasibility and credibility of the entity's preferred resolution strategy is limited, taking into account the entity's size, interconnectedness, the nature, scope, risk and complexity of its activities, its legal status and shareholding structure, or

(c) the requirement referred to in Article 104a of Directive 2013/36/EU reflects that the resolution entity that is a G-SII or subject to Article 45c(3a) or (3b) is among the 20% riskiest institutions for which the resolution authority determines the requirement referred to in Article 45.

For the purposes of the limit referred to in the first subparagraph, the resolution authority shall round up the number resulting from the calculation to the closest whole number.

Member States may, by taking into account the specificities of their national banking sector, including in particular the number of resolution entities that are G-SIIs or subject to Article 45c(3a) or (3b) for which the national resolution authority determines the requirement referred to in Article 45f, set the percentage referred to in the first subparagraph at a level higher than 30%.

8. The decision referred to in paragraphs 4 and 6 shall be taken by the resolution authority in consultation with the competent authority.

When taking the decision referred to in paragraphs 4 and 6, resolution authorities shall also take into account:

(a) the depth of the market for the institution's instruments referred to in the first subparagraph, the pricing of such existing instruments, and the time needed to execute any transactions necessary for the purpose of compliance with the decision referred to in the first subparagraph;

(b) the amount of eligible liabilities instruments that meet all of the conditions referred to in Article 72a of Regulation (EU) No 575/2013 with a residual maturity below one year as of the date of the decision to apply the requirement with a view to make quantitative adjustments to the requirement referred in the first subparagraph;

(c) the availability and the amount of instruments that meet all of the conditions referred to in Article 72a, except for point (d) of Article 72b(2) of Regulation (EU) No 575/2013;

(d) whether the amount of liabilities excluded from the application of the write-down or conversion powers in accordance with Article 44(2) or Article 44(3) that, in normal insolvency proceedings, rank equally or below the highest ranking eligible liabilities is significant compared to eligible liabilities and own funds of an institution.

Where the amount of excluded liabilities referred in point (d) does not exceed 5% of the amount of own funds and eligible liabilities of an institution, the excluded amount shall be considered as not being significant. Above that limit, the significance of the excluded liabilities shall be assessed by resolution authorities.

(e) the entity's business model, funding model, and risk profile, as well as its stability and ability to contribute to the economy;

(f) the impact of possible restructuring costs on the entity's recapitalisation."

Art. 45c(1) BRRD (Lines 310-316):

"1. The requirement referred to in Article 45(1) shall be determined by the resolution authority, after having consulted the competent authority, on the basis of the following criteria:

(a) the need to ensure that the resolution group can be resolved by the application of the resolution tools including, where appropriate, the bail-in tool, in a way that meets the resolution objectives;

(b) the need to ensure, in appropriate cases, that the resolution entity and its subsidiaries that are institutions, but not resolution entities have sufficient eligible liabilities to ensure that, if the bail-in tool or write down and conversion powers were to be applied to them, respectively, losses could be absorbed and the total capital ratio and the leverage ratio of the relevant entities can be restored to a level necessary to enable them to continue to comply with the conditions for authorisation and to carry on the activities for which they are authorised under Directive 2013/36/EU or Directive 2014/65/EU;

(c) the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in pursuant to Article 44(3) or might be transferred to a recipient in full under a partial transfer, the resolution entity has sufficient other eligible liabilities to ensure that losses could be absorbed and the total capital ratio, or as applicable, the leverage ratio of the resolution entity can be restored to a level necessary to enable it to continue to comply with the conditions for authorisation and to carry on the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU;

(d) the size, the business model, the funding model and the risk profile of the entity;

(f) the extent to which the failure of the entity would have an adverse effect on financial stability, including, due to the interconnectedness of the entity with other institutions or entities or with the rest of the financial system through contagion to other institutions or entities."

Article 45c (3a) and (3b) BRRD (Lines 348-357):

"3a. For resolution entities that are not subject to Article 92a of Regulation (EU) No 575/2013 and that are part of a resolution group whose total assets exceed 100 billion, the level of the requirement referred to in paragraph 3 shall be at least equal to ("Pillar 1 requirement for top tier banks"):

(a) 13,5 % when calculated in accordance with point (a) of Article 45(2) and

(b) 5% when calculated in accordance with point (b) of Article 45(2).

By way of derogation from Article 45b, resolution entities referred to in the previous sub-paragraph shall meet the level of the requirement referred to in this paragraph that is equal to 13,5 % when calculated in accordance with point (a) of Article 45(2) and to 5% when calculated in accordance with point (b) of Article 45(2) with eligible liabilities that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013, except for paragraphs (3) to (5) of Article 72b of that Regulation, liabilities referred to in Article 45b(2a) or own funds.

(2) 3b. Resolution authorities may, after consulting competent authorities, decide to apply the minimum requirements laid down in paragraph 3a to resolution entities that are not subject to Article 92a of Regulation (EU) No 575/2013 and are part of a resolution group whose total assets are lower than EUR 100 billion, and are assessed by the resolution authority to be reasonably likely to pose a systemic risk in case of failure.

(3) When taking the decisions referred to in the previous subparagraph, resolution authorities shall take into account:

(4) (i) the prevalence of deposits and the absence of debt instruments in the funding model;

(5) (ii) the limited access to the capital markets for eligible liabilities;

(6) (iii) the reliance on Common Equity Tier 1 to meet the requirement referred to in Article 45 (1).

The decision not to impose a minimum requirement pursuant to paragraph 3b is without prejudice of the decision to impose that the requirement referred to in Article 45f shall be met with instruments that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 pursuant to article 45.b (3) to (6)."

Art. 45m BRRD (Lines 585-603):

"Article 45m
Transitional and post-resolution arrangements

1. By way of derogation from Article 45(1), resolution authorities shall determine an appropriate transitional period for an institution or entity referred to in points (b), (c) and (d) of Article 1(1) to comply with the requirements in Articles 45f or 45g or a requirement due to application of Article 45b(3), Article 45b(4) or Article 45b(6), as appropriate. The deadline to comply with the requirements in Articles 45f or 45g or a requirement due to application of Article 45b(3)), Article 45b(4) or Article 45b(6), shall be 1 January 2024.

The resolution authority shall determine an intermediate target level for the requirements in Articles 45f or 45g or a requirement due to application of Article 45b(3), Article 45b(4) or Article 45b(6), as appropriate, that an institution or entity referred to in points (b), (c) and (d) of Article 1(1) shall comply with at 1 January 2022. The intermediate target shall, as a rule, ensure a linear build-up of eligible liabilities and own funds towards the requirement.

The resolution authority may set a transitional period that is longer than 1 January 2024 where duly justified and appropriate on the basis of the criteria referred to in paragraph (4) and by taking into consideration:

(a) the development of the entity's financial situation;

(b) the prospect that the entity will be able to ensure compliance with the requirements in Articles 45f or 45g or a requirement due to application of Article 45b(3), Article 45b(4) or Article 45b(6) in a reasonable timeframe;

(c) whether the entity is able to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013, Article 45b or Article 45g(3), whether this inability is of idiosyncratic nature or due to market-wide disturbance,

1a. The deadline to comply with the minimum level of the requirements referred to in Article 45c(3a) and (3b) shall be 1 January 2022.

1b. The minimum level of the requirement referred to in Article 45c(3a) and (3b) shall not apply in the following cases:

(a) within the three years following the date on which the resolution entity starts to be in the situation referred to in Article 45c(3a) or (3b);

(b) within the two years following the date on which the resolution authority has applied the bail-in tool;

(c) within the two years following the date on which the resolution entity has put in place an alternative private sector measure referred to in point (b) of Article 32(1) by which capital instruments and other liabilities have been written down or converted into Common Equity Tier 1 in order to recapitalise the resolution entity without the application of resolution tools.

2. By way of derogation from Article 45(1), resolution authorities shall determine an appropriate transitional period to comply with the requirements of Articles 45f or 45g or a requirement due to application of Article 45b(3), Article 45b(4) or Article 45b(6), as appropriate, for an institution or entity referred to in points (b), (c) and (d) of Article 1(1) to which resolution tools or the power to write down and or convert relevant capital instruments and eligible liabilities have been applied.~

3. For the purposes of paragraphs 1, 1a and 2, resolution authorities shall communicate to the institution or entity referred to in points (b), (c) and (d) of Article 1(1) a planned MREL for each 12 months period during the transitional period with a view to facilitating a gradual build-up of its loss absorption and recapitalisation capacity.. At the end of the transitional period, the MREL shall be equal to the amount determined under Articles 45c (3a), 45c(3b), 45f, 45g,45b (3), 45b(4) or 45b(6), as applicable.

4. When setting the transitional periods, resolution authorities shall take into account:

(i) the prevalence of deposits and the absence of debt instruments in the funding model;

(ii) the access to the capital markets for eligible liabilities;

(iii) the reliance on Common Equity Tier 1 to meet the requirement referred to in Article 45f.

5. Subject to paragraph 1, resolution authorities shall not be prevented from subsequently revising either the transitional period or any planned MREL set out under paragraph 3."

Art. 72b (3) CRR (Lines 555-559):

"3. In addition to the liabilities referred to in paragraph 2, the resolution authority may permit liabilities to qualify as eligible liabilities instruments up to an aggregate amount that does not exceed 3.5% of the total risk exposure amount calculated in accordance with paragraphs 3 and 4 of Article 92, provided that:

(a) all the conditions laid down in paragraph 2 except for the condition in point (d) are met;

(b) the liabilities rank pari passu with the lowest ranking excluded liabilities referred to in Article 72a(2) with the exception of the excluded liabilities subordinated to ordinary unsecured claims under national insolvency law referred to in the last subparagraph of paragraph 2; and

(c) the inclusion of these liabilities in eligible liabilities items would not give rise to material risk of successful legal challenge or of valid compensation claims as assessed by the resolution in relation to the principles referred to in point (g) of Article 34(1) and Article 75 of Directive 2014/59/EU."

Art. 92a (1) CRR (Lines 827-829):

"1. Subject to Articles 93 and 94 and to the exceptions set out in paragraph 2 of this Article, institutions identified as resolution entities and that are a G-SII or part of a G-SII shall at all times satisfy the following requirements for own funds and eligible liabilities:

(a) a risk-based ratio of 18%, representing the own funds and eligible liabilities of the institution expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) and (4);

(b) a non-risk-based ratio of 6,75%, representing the own funds and eligible liabilities of the institution expressed as a percentage of the total exposure measure referred to in Article 429(4)."

Art 494 CRR (Lines 4253-4259):

"Article 494
Transitional provisions - requirement for own funds and eligible liabilities

1. By way of derogation from Article 92a, as from 1 January 2019 until 31 December 2021, institutions identified as resolution entities that are a G-SII or part of a G-SII shall at all times satisfy the following requirements for own funds and eligible liabilities:

(a) a risk-based ratio of 16%, representing the own funds and eligible liabilities of the institution expressed as a percentage of the total risk exposure amount calculated in accordance with paragraphs 3 and 4 of Article 92;

(b) a non-risk-based ratio of 6%, representing the own funds and eligible liabilities of the institution expressed as a percentage of the total exposure measure referred to in Article 429(4).

2. By way of derogation from Article 72b(3), as from 1 January 2019 until 31 December 2021,the extent to which eligible liabilities instruments referred to in Article 72b(3) may be included in eligible liabilities items shall be 2.5% of the total risk exposure amount calculated in accordance with paragraphs 3 and 4 of Article 92.

3. For the purposes of paragraph 3 of Article 72b, until the resolution authority assesses for the first time the elements referred to in points (b) and (c) of Article 45b(3) of Directive 2014/59/EU and confirms there is no material adverse impact on the resolvability of the institution, liabilities shall qualify as eligible liabilities instruments up to an aggregate amount that does not exceed, until 31 December 2021, 2.5% and, after that date, 3.5% of the total risk exposure amount calculated in accordance with paragraphs 3 and 4 of Article 92, provided that they meet the conditions laid down in points (a) and (b) of Article 72b(3)."

Art 494b (3) CRR (Line 4276):

"Article 494b
Grandfathering of own funds instruments and eligible liabilities instruments

[…]

3. By way of derogation from Article 72a(1)(a), liabilities issued prior to [date of entry into force of CRR2] may qualify as eligible liabilities items where they satisfy the conditions laid down in Article 72b, except for the conditions referred to in points (f) to (m) of Article 72b(2)."

Art. 12c SRMR (Lines 162-214):

(7) **"Article 12c**
Eligible liabilities for resolution entities

1. Eligible liabilities shall be included in the amount of own funds and eligible liabilities of resolution entities only where they satisfy the conditions referred to in 72a, except for point (d) of Article 72b(2) of Regulation (EU) No 575/2013.

By way of derogation from the first subparagraph, where this Regulation refers to the requirements in Article 92a or Article 92b of Regulation (EU) No 575/2013, eligible liabilities for the purpose of those Articles shall consist of eligible liabilities as defined in Article 72k of Regulation (EU) No 575/2013 and determined in accordance with Chapter 5a of Part Two, Title I of that Regulation.

2. Liabilities that arise from debt instruments with embedded derivatives, such as structured notes, that meet the conditions of the first subparagraph of paragraph 1, except for point (l) of Article 72a(2) of Regulation (EU) No 575/2013, shall be included in the amount of own funds and eligible liabilities only where one of the following conditions is met

(a) the principal amount of the liability arising from the debt instrument is known in advance at the time of issuance, is fixed or increasing and not affected by an embedded derivative feature and the amount of the liability arising from the debt instrument and from the embedded derivative can be valued daily by reference to an active, liquid two-way market for an equivalent instrument without credit risk in line with Articles 104 and 105 of Regulation (EU) No 575/2013, or

(b) the debt instrument includes a contractual term that specifies that the value of the claim in the events of insolvency and of resolution of the issuer is fixed, and is no more than the initially paid up amount of the liability.

Debt instruments referred to in the first subparagraph, including their embedded derivatives, shall not be subject to any netting agreement and their valuation shall not be subject to Article 49(3)

The liabilities referred to in the first subparagraph shall only be included in the amount of own funds and eligible liabilities for the part that corresponds to the principal amount referred to in point (a) or the fixed amount referred to in point (b) of that subparagraph.

2a. Liabilities issued by a subsidiary established in the participating Member State that is part of the same resolution group as the resolution entity to an existing shareholder that is not part of the same resolution group shall be included in the amount of own funds and eligible liabilities of resolution entities provided that all of the following conditions are met:

a) they are issued in accordance with Article 12h(3)(a);

b) the exercise of the power of write-down or convert in relation to such liabilities in accordance with Article 21 does not affect the control of the subsidiary by the resolution entity;

c) they do not exceed an amount determined by subtracting the amount referred to in point (i) from the amount referred to in point (ii):

i. the sum of the liabilities issued to and bought by the resolution entity either directly or indirectly through other entities in the same resolution group and the amount of own funds issued in accordance with Article 12h(3)(b);

ii. the amount required in accordance with Article 12h(1).

3. Without prejudice to the minimum requirement in Article 12d(3a) and Article 12e(1)(a), the Board, on its own initiative after consulting the national resolution authority or upon proposal by a national resolution authority, shall ensure that part of the requirement referred to in Article 12g equal to 8% of the total liabilities, including own funds, shall be met by resolution entities that are GSIIs or resolution entities subject to Article 12d(3a) and (3b) with own funds and instruments that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 except for paragraphs (3) to (5) of Article 72b of that Regulation. The Board may permit that a level lower than 8% of the total liabilities, including own funds, but higher than the amount resulting from the application of the formula (1-X1/X2) x8% of the total liabilities, including own funds, shall be met by resolution entities that are GSIIs or resolution entities subject to Article 12d(3a) and (3b) with own funds and instruments that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 except for paragraphs (3) to (5) of Article 72b of that Regulation, provided that conditions (a), (b) and (c) of Article 72b(3) of Regulation (EU) No 575/2013 are met, where, respecting the limit of the proportion of the reduction possible under Article 72b (3) of Regulation No 575/2013:

X1 = 3.5% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.

X2 = amount resulting from the sum of (i) 18% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 and (ii) the requirement referred to in Article 128(6) of Directive 2013/36/EU

Where, for resolution entities subject to Article 12d(3a), the application of the previous subparagraph leads to a requirement above 27% of the total risk exposure amount, the resolution authority shall limit, for the entity concerned, the part of the requirement referred to in Article 12g which shall be met with own funds and instruments that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 except for paragraphs (3) to (5) of Article 72b of that Regulation to an amount equal to 27% of the total risk exposure amount if the Board has assessed, taking also into account the risk of disproportionate impact on the business model of the entity concerned, that:

(8) (a) access to the resolution financing arrangement is not considered in the resolution plan to be an option for resolving the entity in question, [and]
(9) (b) where point (a) does not apply, the requirement referred to in Article 45f allows the resolution entity to meet the requirements in Article 44(5) or 44(8) as applicable.
(10) For resolution entities subject to Article 12d (3b), the previous subparagraph does not apply.

4. For resolution entities that are neither GSIIs nor resolution entities subject to Article 12d(3a) and (3b), the Board, on its own initiative after consulting the national resolution authority or upon proposal by a national resolution authority, may decide that a part of the requirement referred to in Article 12g up to the higher of 8% of the total liabilities, including own funds, of the entity or the formula referred to in paragraph 6 shall be met by with own funds and instruments that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 except for paragraphs (3) to (5) of Article 72b of that Regulation provided that the following conditions are met:

(a) non-subordinated liabilities referred to in the paragraph (1) and (2) have the same priority ranking in the national insolvency hierarchy as certain liabilities excluded from the application of the write-down or conversion powers in accordance with Article 27(3) or Article 27(5);

(b) the risk that as a result of a planned application of write-down and conversion powers to non-subordinated liabilities that are not excluded from the application of the write-down or conversion powers in accordance with Article 27(3) or Article 27(5), creditors of claims arising from those liabilities incur greater losses than they would incur in a winding up under normal insolvency proceedings;

(c) the amount of subordinated liabilities does not exceed the amount necessary to ensure that creditors referred to in point (b) shall not incur losses above the level of losses that they would otherwise have incurred in a winding up under normal insolvency proceedings.

Where the Board determines that, within a class of liabilities which includes eligible liabilities, the amount of liabilities that are reasonably likely to be excluded from the application of the write-down or conversion powers in accordance with Articles 27(3) or 27(5), totals more than 10% of that class, it shall assess the risk referred to in point (b) of the second subparagraph.

5. For the purposes of paragraphs 3 and 4, derivative liabilities shall be included in total liabilities on the basis that full recognition is given to counterparty netting rights.

Own funds of an entity used to comply with the requirement referred to in Article 128(6) of Directive 2013/36/EU shall be eligible to comply with requirement referred to in paragraphs 3 and 4.

6. By derogation from paragraph 3, the Board may decide that the requirement referred to in Article 12g shall be met by resolution entities that are GSIIs or resolution entities subject to Article 12d(3a) or (3b) with instruments that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013 except for paragraphs (3) to (5) of Article 72b of that Regulation and own funds of the entity due to its obligation to comply with the requirements referred to in Article 128(6) of Directive 2013/36/EU, Article 92a of Regulation (EU) No 575/2013, Article 12d(3a), and Article 12g does not exceed the higher of 8% of total liabilities, including own funds, of the entity or the amount resulting from the application of the formula Ax2+Bx2+C, where A, B and C are the following amounts:

A=amount resulting from the requirement referred to in Article 92(1)(c) of Regulation (EU) No 575/2013 (Pillar 1)

B= amount resulting from the requirement referred to in Article 104a of Directive 2013/36/EU (Pillar 2R)

C= amount resulting from the requirement referred to in Article 128(6) of Directive 2013/36/EU (combined capital buffer requirement)

7. The Board may exercise the power referred to in paragraph 6 on the resolution entities that are G-SIIs or subject to Article 12d(3a) or (3b) that meet one of the conditions below and as long as the number of identified resolution entities does not exceed 30% of all resolution entities that are G-SIIs or subject to Article 12d(3a) or (3b) for which the Board determines the requirement referred to in Article 12g. The conditions shall be considered by the Board as follows:

(a) where, substantive impediments to resolvability have been identified in the preceding resolvability assessment, and:

(i) no remedial action has been taken following the application of the powers referred to in Article 10(11) in the timeline required by the resolution authority, or

(ii) the identified impediment cannot be addressed by any of the powers referred to in Article 10(11), and the exercise of the power referred to in paragraph 6 would partially or fully compensate for the negative impact of the substantive impediment on resolvability, or

(b) the resolution authority considers that the feasibility and credibility of the entity's preferred resolution strategy is limited, taking into account the entity's size, interconnectedness, the nature, scope, risk and complexity of its activities, its legal status and shareholding structure.

For the purposes of the limit referred to in the first subparagraph, the resolution authority shall round up the number resulting from the calculation to the closest whole number or

(c) the requirement referred to in Article 104a of Directive 2013/36/EU reflects that the resolution entity that is a G-SII or subject to Article 12d(3a) or (3b) is among the 20% riskiest institutions for which the Board determines the requirement referred to in Article 12a.

8. The decisions referred to in paragraphs 4 and 6 shall be taken by the Board in consultation with competent authorities, including the ECB.

When taking the decision referred to in paragraphs 4 and 6, the Board shall also take into account:

(a) the depth of the market for the institution's instruments referred to in the first subparagraph, the pricing of such existing instruments, and the time needed to execute any transactions necessary for the purpose of compliance with the decision referred to in the first subparagraph;

(b) the amount of eligible liabilities instruments that meet all of the conditions referred to in Article 72a of Regulation (EU) No 575/2013 with a residual maturity below one year as of the date of the decision to apply the requirement with a view to make quantitative adjustments to the requirement referred to in the first subparagraph;

(c) the availability and the amount of instruments that meet all of the conditions referred to in Article 72a, except for point (d) of Article 72b(2) of Regulation (EU) No 575/2013;

(d) whether the amount of liabilities excluded from the application of the write-down or conversion powers in accordance with Article 27(3) or Article 27(5) that, in normal insolvency proceedings, rank equally or below the highest ranking eligible liabilities is significant compared to eligible liabilities and own funds of an institution.

Where the amount of excluded liabilities referred in point (d) does not exceed 5% of the amount of own funds and eligible liabilities of an institution, the excluded amount shall be considered as not being significant. Above that limit, the significance of the excluded liabilities shall be assessed by the Board.

(e) the entity's business model, funding model, and risk profile, as well as its stability an ability to contribute to the economy;

(f) the impact of possible restructuring costs on the entity's recapitalisation."

Art 12d (1) SRMR (Lines 216-222):

"Article 12d
Determination of the minimum requirement for own funds and eligible liabilities

1. The requirement referred to in Article 12a(1) shall be determined by the Board, after having consulted the competent authorities, including the ECB, on the basis of the following criteria:

(a) the need to ensure that the resolution group can be resolved by the application of the resolution tools including, where appropriate, the bail-in tool, in a way that meets the resolution objectives;

(b) the need to ensure, in appropriate cases, that the resolution entity and their subsidiaries that are institutions, but not resolution entities have sufficient eligible liabilities to ensure that, if the bail-in tool or write down and conversion powers were to be applied to them, respectively, losses could be absorbed and the capital requirements or, as applicable, the leverage ratio of the relevant entities can be restored to a level necessary to enable them to continue to comply with the conditions for authorisation and to carry on the activities for which they are authorised under Directive 2013/36/EU or Directive 2014/65/EU;

(c) the need to ensure that, if the resolution plan anticipates that certain classes of eligible liabilities might be excluded from bail-in pursuant to 27(5) or might be transferred to a recipient in full under a partial transfer, the resolution entity has sufficient other eligible liabilities to ensure that losses could be absorbed and the total capital ratio or, as applicable, the leverage ratio of the resolution entity can be restored to a level necessary to enable it to continue to comply with the conditions for authorisation and to carry on the activities for which it is authorised under Directive 2013/36/EU or Directive 2014/65/EU;

(d) the size, the business model, the funding model and the risk profile of the entity;

(e) the extent to which the failure of the relevant entity would have an adverse effect on financial stability, including, due to the interconnectedness of the entity with other institutions or entities or with the rest of the financial system through contagion to other institutions or entities."

Art. 12d (3a) and (3b) SRMR (Lines 251-259):

"3a. For resolution entities that are not subject to Article 92a of Regulation (EU) No 575/2013 and that are part of a resolution group whose total assets exceed EUR100 billion the level of the requirement referred to in paragraph 3 shall be at least equal to ("Pillar 1 requirement for top tier banks):

(a) 13,5 % when calculated in accordance with point (a) of Article 12a(2) and

(b) 5% when calculated in accordance with point (b) of Article 12a(2).

By way of derogation from Article 12c, resolution entities referred to in the previous sub-paragraph shall meet the level of the requirement referred to in this paragraph that is equal to 13,5 % when calculated in accordance with point (a) of Article 12a(2) and to 5% when calculated in accordance with point (b) of Article 12a(2) with eligible liabilities that meet all conditions referred to in Article 72a of Regulation (EU) No 575/2013, except for paragraphs (3) to (5) of Article 72b of that Regulation, liabilities referred to in Article 12c(2a) or own funds.

3b. Upon request of the national resolution authority of a resolution entity, the Board shall apply the minimum requirements laid down in paragraph 3a to resolution entities that are not subject to Article 92a of Regulation (EU) No 575/2013 and are part of a resolution group whose total assets are lower than EUR 100 billion, and are considered by the national resolution authority to be reasonably likely to pose a systemic risk in case of failure.

When taking the decision to make a request referred to in the previous subparagraph, the national resolution authority shall take into account:

(i) the prevalence of deposits and the absence of debt instruments in the funding model;

(ii) the limited access to the capital markets for eligible liabilities;

(iii) the reliance on Common Equity Tier 1 to meet the requirement referred to in Article 45(1)."

2. Moratorium

Article 33a BRRD (lines 213 and line 228):

"1. Member States shall ensure that resolution authorities, after consulting the competent authority, have the power to suspend any payment or delivery obligations pursuant to any contract to which an institution or an entity referred to in points (b), (c) or (d) of Article 1(1) is a party where all of the following conditions are met:

(a) a determination has been made that the institution or entity is failing or likely to fail under point (a) of Article 32(1);

(b) there is no immediately available private sector measure within the meaning of point (b) of Article 32(1) that would prevent the failure of the institution;

(c) it is deemed necessary to avoid the further deterioration of the financial conditions of the institution or entity referred to in points (b), (c) or (d) of Article (1)1; and

(d) the exercise of the suspension power is either:

(i) necessary to reach the determination provided for in point (c) of Article 32(1); or
(ii) necessary to choose the appropriate resolution actions or to ensure the effective application of one or more resolution tools."

"11. In the event that, after making a determination that an institution is failing or likely to fail pursuant to Article 32(1) (a), a resolution authority has exercised any of the power under paragraph 1,or 9 or 10 of this Article, and if resolution action is subsequently taken with respect to that institution, the resolution authority shall not exercise its powers under paragraph 1 of Article 69, 70 or 71 with respect to that institution."

"19a. It is useful and necessary to adjust the power of resolution authorities to suspend, for a limited period, certain contractual obligations. In particular, it should be possible to exercise this power before the bank is put under resolution, particularly from the moment when the determination that the bank is Failing or Likely to Fail is made, if there is no private sector measure which, in the view of the resolution authority would prevent the failure of the institution within a reasonable timeframe is immediately available and it would be deemed necessary to avoid the further deterioration of the financial conditions of the bank. In this context, resolution authorities should retain their power to suspend certain contractual obligations if they are not satisfied with the proposed private sector measure. Furthermore, this power would allow for example the resolution authority, to establish whether a resolution action is in the public interest and to choose the most appropriate resolution tools or to ensure the effective application of one or more resolution tools. The duration of the suspension should be limited to a maximum of 2 business days. Up to this maximum, the suspension can continue to apply after the resolution decision is taken.

In order for the moratorium power to be used in a proportionate way, the authorities should have the flexibility to tailor the scope of the moratorium to the needs of the concrete case. Furthermore, they should be able to authorize certain payments – especially, but not limited to, administrative expenses of the institution - on a case-by-case basis. The power can also apply to eligible deposits. However, the resolution authority should carefully assess the appropriateness of applying the suspension to certain eligible deposits, especially covered deposits held by natural persons and micro, small and medium sized enterprises, and should assess the risk whether application of suspension on such deposits would severely disrupt the functioning of financial markets.

Resolution authorities should also consider in this context, also based on the resolution plan for the institution, the possibility that the institution is ultimately not put into resolution but is wound down under national insolvency laws and should in such cases make the arrangements it deems appropriate, to achieve adequate coordination with the relevant national authorities and to ensure that the moratorium does not impair the effectiveness of the wound down process under national insolvency law. In order to ensure that, during the suspension period, depositors do not encounter financial difficulties, the resolution authority may determine that they are allowed a certain daily amount of withdrawals."

3. MDA

Article 16a BRRD:

"Article 16a

Power to prohibit certain distributions

(1) Where an entity is in a situation where it meets the combined buffer requirement defined in Article 128(6) of Directive 2013/36/EU when considered in addition to each of the requirements referred to points (a), (b) and (c) of Article 141a(1) of Directive 2013/36/EU, but it does not meet the combined buffer requirement defined in Article 128(6) of Directive 2013/36/EU when considered in addition to, the requirements referred to in Articles 45c and 45d when calculated in accordance with point (a) of Article 45(2) of this Directive, the resolution authority of that entity shall have the power to prohibit an entity from distributing, in accordance with the conditions in paragraph (2) and (3), more than the Maximum Distributable Amount related to the minimum requirement for own funds and eligible liabilities ('M-MDA') calculated in accordance with paragraph 4 through any of the following actions:

(a) make a distribution in connection with Common Equity Tier 1 capital;

(b) create an obligation to pay variable remuneration or discretionary pension benefits or pay variable remuneration if the obligation to pay was created at a time when the entity failed to meet the combined buffer requirements;

(c) make payments on Additional Tier 1 instruments.

Where the entity is in the situation referred to in sub-paragraph 1, it shall immediately notify the resolution authority about the breach.

(2) In the situation referred to in paragraph 1, the resolution authority of the entity, after consulting the competent authority, shall without unnecessary delay assess whether to exercise the power referred to in paragraph 1 taking into account all the following elements:

(a) the reason, duration and magnitude of the breach and its impact on resolvability;

(b) the development of the entity's financial situation and the likelihood that it may, in the foreseeable future, fulfil the condition referred to in Article 32(1)(a);

(c) the prospect that the entity will be able to ensure compliance with the requirements referred to in paragraph 1 in a reasonable timeframe;

(d) where the entity is unable to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013, Article 45b or Article 45g(3), if this inability is of idiosyncratic nature or due to market-wide disturbance;

(e) if exercise of the power referred to in paragraph 1 is the most adequate and proportionate means to address the situation of the institutions based on its potential impact on both the financing conditions and resolvability of the entity concerned.

The resolution authority shall repeat its assessment of whether to exercise the power referred to paragraph 1 at least every month during the duration of the breach as long as the entity continues to be in situation referred to in paragraph 1.

(3) If the resolution authority assesses that the entity is still in the situation referred to in paragraph 1 nine months after such situation has been notified, the resolution authority, after consultation of the competent authority, shall exercise the power referred to in paragraph 1 except where the resolution authority assesses that at least two of the following conditions are fulfilled:

(i) the breach is due to a serious disturbance to the functioning of financial markets, which leads to broad-based financial market stress across several segments of financial markets;

(ii) the disturbance referred to in point (i) results not only in increased price volatility of the own funds and eligible liabilities instruments of the entity or increased costs for the entity, but leads to a full or partial closure of markets which prevents the entity from issuing own funds and eligible liabilities instruments on the markets;

(iii) the market closure referred to in point (ii) is observed not only for the concerned entity but also for several other entities;

(iv) the disturbance referred to in point (i) prevents the concerned entity from issuing own funds and eligible liabilities instruments in a volume sufficient to remedy the breach;

(v) an exercise of the power referred to paragraph 1 leads to negative spill-over effects for part of the banking sector which may undermine financial stability.

Where the exception referred to in the previous subparagraph is applied, the resolution authority shall notify the competent authority of its decision and explain its assessment in writing.

The resolution authority shall repeat its assessment of the conditions of the previous subparagraph every month to assess whether the exception may be applied.

(4) The 'M-MDA' shall be calculated by multiplying the sum calculated in accordance with paragraph 5 by the factor determined in accordance with paragraph 6. The 'M-MDA' shall be reduced by any of the actions referred to in point (a), (b) or (c) of paragraph 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 net of any distribution of profits or any payment related to the actions referred to in point (a), (b) or (c) of paragraph 1 of this Article;

plus

(b) year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 net of any distribution of profits or any payment related to the actions referred to in point (a), (b) or (c) of paragraph 1 of this Article;

minus

(c) amounts which would be payable by tax if the items specified in points (a) and (b) of this paragraph were to be retained.

(6) The factor shall be determined as follows:

(a) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet any of the own funds requirements under Article 92a of Regulation (EU) No 575/2013 and under Articles 45c and 45d of this Directive expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0;

(b) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet any of the own funds requirements under Article 92a of Regulation (EU) No 575/2013 and under Articles 45c and 45d of this Directive, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the second quartile of the combined buffer requirement, the factor shall be 0,2;

(c) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirements under Article 92a of Regulation (EU) No 575/2013 and under Articles 45c and 45d of this Directive, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the third quartile of the combined buffer requirement, the factor shall be 0,4;

(d) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirements under Article 92a of Regulation (EU) No 575/2013 and under Articles 45c and 45d of this Directive, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0,6;

The lower and upper bounds of each quartile of the combined buffer requirement shall be calculated as follows:

$$Lower\ bound\ of\ quartile = \frac{Combined\ buffer\ requirement}{4} \times (Qn - 1)$$

$$Upper\ bound\ of\ quartile = \frac{Combined\ buffer\ requirement}{4} \times Qn$$

"Qn" indicates the ordinal number of the quartile concerned.

In Article 141 CRD paragraphs 1 to 6 are replaced by the following:

"1. An institution that meets the combined buffer requirement shall not make a distribution in connection with Common Equity Tier 1 capital to an extent that would decrease its Common Equity Tier 1 capital to a level where the combined buffer requirement is no longer met.

2. An institution that fails to meet the combined buffer requirement shall calculate the Maximum Distributable Amount ('MDA') in accordance with paragraph 4 and shall notify the competent authority of that MDA.

Where the first subparagraph applies, the institution shall not undertake any of the following actions before it has calculated the MDA:

(a) make a distribution in connection with Common Equity Tier 1 capital;

(b) create an obligation to pay variable remuneration or discretionary pension benefits or pay variable remuneration if the obligation to pay was created at a time when the institution failed to meet the combined buffer requirements;

(c) make payments on Additional Tier 1 instruments.

3. Where an institution fails to meet or exceed its combined buffer requirement, it shall not distribute more than the MDA calculated in accordance with paragraph 4 through any action referred to in points (a), (b) and (c) of the second subparagraph of paragraph 2.

4. Institutions shall calculate the MDA by multiplying the sum calculated in accordance with paragraph 5 by the factor determined in accordance with paragraph 6. The MDA shall be reduced by any of the actions referred to in point (a), (b) or (c) of the second subparagraph of paragraph 2.

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 net of any distribution of profits or any payment related to the actions referred to in point (a), (b) or (c) of the second subparagraph of paragraph 2 of this Article; plus

(b) year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 net of any distribution of profits or any payment related to the actions referred to in point (a), (b) or (c) of the second subparagraph of paragraph 2 of this Article; minus

(c) (amounts which would be payable by tax if the items specified in points (a) and (b) of this paragraph were to be retained.

6. The factor shall be determined as follows:

(a) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet any of the own funds requirements under points (a), (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013 and under Article 104(1)(a) of this Directive expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0;

(b) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet any of the own funds requirements under points (a), (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013and under Article 104(1)(a) of this Directive, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the second quartile of the combined buffer requirement, the factor shall be 0,2;

(c) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirements under points (a), (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013 and under Article 104(1)(a) of this Directive, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the third quartile of the combined buffer requirement, the factor shall be 0,4;

(d) where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirements under (b) and (c) of Article 92(1) of Regulation (EU) No 575/2013 and under Article 104(1)(a) of this Directive, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0,6;

The lower and upper bounds of each quartile of the combined buffer requirement shall be calculated as follows:

$$Lower\ bound\ of\ quartile = \frac{Combined\ buffer\ requirement}{4} \times (Qn - 1)$$

$$Upper\ bound\ of\ quartile = \frac{Combined\ buffer\ requirement}{4} \times Qn$$

"Q_n" indicates the ordinal number of the quartile concerned."

The following Article 141a CRD is inserted:

"Article 141a
Failure to meet the combined buffer requirement

An institution shall be considered as failing to meet the combined buffer requirement for the purposes of Article 141 where it does not have own funds and eligible liabilities in an amount and of the quality needed to meet at the same time the requirement defined in Article 128(6) and each of the following requirements in:

(a) Article 92(1)(a) of Regulation (EU) No 575/2013 and the requirement in Article 104(1)(a) of this Directive;

(b) Article 92(1)(b) of Regulation (EU) No 575/2013 and the requirement in Article 104(1)(a) of this Directive;

(c) Article 92(1)(c) of Regulation (EU) No 575/2013 and the requirement in Article 104(1)(a) of this Directive~~;~~

The following new Articles 141b and 141c are inserted after Article 141a:

"Article 141b

Restriction on distributions in case of failure to meet the leverage ratio buffer requirement

1. An institution that meets the leverage ratio buffer requirement pursuant to Article 92(1a) of Regulation (EU) 575/2013 shall not make a distribution in connection with Tier 1 capital to an extent that would decrease its Tier 1 capital to a level where the leverage ratio buffer requirement is no longer met.

2. An institution that fails to meet the leverage ratio buffer requirement shall calculate the Leverage ratio related Maximum Distributable Amount ('L-MDA') in accordance with paragraph 4 and shall notify the competent authority of that L-MDA.

Where the first subparagraph applies, the institution shall not undertake any of the following actions before it has calculated the L-MDA:

(a) make a distribution in connection with Common Equity Tier 1 capital;

(b) create an obligation to pay variable remuneration or discretionary pension benefits or pay variable remuneration if the obligation to pay was created at a time when the institution failed to meet the combined buffer requirements;

(c) make payments on Additional Tier 1 instruments

3. Where an institution fails to meet or exceed its leverage ratio buffer requirement, it shall not distribute more than the L-MDA calculated in accordance with paragraph 4 through any action referred to in points (a), (b) and (c) of the second subparagraph of paragraph 2.

4. Institutions shall calculate the L-MDA by multiplying the sum calculated in accordance with paragraph 5 by the factor determined in accordance with paragraph 6. The L-MDA shall be reduced by any of the actions referred to in point (a), (b) or (c) of the second subparagraph of paragraph 2.

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 net of any distribution of profits or any payment related to the actions referred to in point (a), (b) or (c) of the second subparagraph of paragraph 2 of this Article; plus

(b) year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 net of any distribution of profits or any payment related to the actions referred to in point (a), (b) or (c) of the second subparagraph of paragraph 2 of this Article;

Minus

(c) amounts which would be payable by tax if the items specified in points (a) and (b) of this paragraph were to be retained.

6. The factor referred to in paragraph 4 shall be determined as follows:

(a) where the Tier 1 capital maintained by the institution which is not used to meet the requirements under Article 92(1)(d) of Regulation (EU) No 575/2013 and under Article 104(1)(a) of this Directive when addressing risk of excessive leverage not sufficiently covered by Article 92(1)(d) of Regulation (EU) No 575/2013, expressed as a percentage of the total exposure measure calculated in accordance with Article 429(4) of Regulation (EU) No 575/2013, is within the first (that is, the lowest) quartile of the leverage ratio buffer requirement, the factor shall be 0;

(b) where the Tier 1 capital maintained by the institution which is not used to meet the requirement under Article 92(1)(d) of Regulation (EU) No 575/2013 and under Article 104(1)(a) of this Directive when addressing risk of excessive leverage not sufficiently covered by Article 92(1)(d) of Regulation (EU) No 575/2013, expressed as a percentage of the total exposure measure calculated in accordance with Article 429(4) of Regulation (EU) No 575/2013, is within the second quartile of the leverage ratio buffer requirement, the factor shall be 0,2;

(c) where the Tier 1 capital maintained by the institution which is not used to meet the requirement under Article 92(1)(d) of Regulation (EU) No 575/2013 and under Article 104(1)(a) of this Directive when addressing risk of excessive leverage not sufficiently covered by Article 92(1)(d) of Regulation (EU) No 575/2013, expressed as a percentage of the total exposure measure calculated in accordance with Article 429(4) of Regulation (EU) No 575/2013, is within the third quartile of the leverage ratio buffer requirement, the factor shall be 0,4;

(d) where the Tier 1 capital maintained by the institution which is not used to meet the requirement under Article 92(1)(d) of Regulation (EU) No 575/2013 and under Article 104(1)(a) of this Directive when addressing risk of excessive leverage not sufficiently covered by Article 92(1)(d) of Regulation (EU) No 575/2013, expressed as a percentage of the total exposure measure calculated in accordance with Article 429(4) of Regulation (EU) No 575/2013, is within the fourth quartile (that is, the highest) quartile of the leverage ratio buffer requirement, the factor shall be 0,6.

The lower and upper bounds of each quartile of the leverage ratio buffer requirement shall be calculated as follows:

$$Lower\ bound\ of\ quartile = \frac{Leverage\ ratio\ buffer\ requirement}{4} \times (Qn - 1)$$

$$Upper\ bound\ of\ quartile = \frac{Leverage\ ratio\ buffer\ requirement}{4} \times Qn$$

"Qn" indicates the ordinal number of the quartile concerned."

7. The restrictions imposed by this Article shall only apply to payments that result in a reduction of Tier 1 capital or in a reduction of profits, and where a suspension of payment or failure to pay does not constitute an event of default or a condition for the commencement of proceedings under the insolvency regime applicable to the institution.

8. Where an institution fails to meet the leverage ratio buffer requirement and intends to distribute any of its distributable profits or undertake an action referred to in points (a), (b) and (c) of the second subparagraph of paragraph 2, it shall notify the competent authority and provide the information listed in Article 141(8) of the CRD, with the exception of point (a)(iii), and the L-MDA calculated in accordance with paragraph 4.

9. Institutions shall maintain arrangements to ensure that the amount of distributable profits and the L-MDA are calculated accurately, and shall be able to demonstrate that accuracy to the competent authority on request.

10. For the purposes of paragraphs 1 and 2, a distribution in connection with Tier 1 capital shall include any of the items listed in Article 141(10)."

Article 141c CRD:

"Article 141c CRD

Failure to meet the leverage ratio buffer requirement

An institution shall be considered as failing to meet the leverage ratio buffer requirement for the purposes of Article 141b where it does not have Tier 1 capital in the amount needed to meet at the same time the requirement defined in Article 92(1a) of Regulation (EU) No 575/2013 and the requirement in Article 92(1)(d) of Regulation (EU) No 575/2013 and Article 104(1)(a) of this Directive when addressing excessive leverage risk not sufficiently covered by point (d) of Article 92(1) of Regulation (EU) No 575/2013.".

The first sub-paragraph of Article 142(1) is replaced by the following:

"1. Where an institution fails to meet its combined buffer requirement or, where applicable, its leverage ratio buffer requirement, it shall prepare a capital conservation plan and submit it to the competent authority no later than five working days after it identified that it was failing to meet that requirement, unless the competent authority authorises a longer delay up to 10 days."

4. Settlement Finality Directive

New recital (23a) BRRD (Line 40a)

"(23a) Directive 98/26/EC reduces the risk associated with participation of institutions and other entities in payment and securities settlement systems, in particular by reducing disruption in the event of the insolvency of a participant in such a system. Recital (7) of that Directive clarifies that Member States have the option to apply the provisions of that Directive to their domestic institutions which participate directly in systems governed by the law of a third country and to collateral security provided in connection with participation in such systems. In view of the global size and activities of some systems governed by the laws of a third country and increased participation of entities established in the Union in such systems, the Commission should review how the Member States apply the option envisaged in recital (7) of that Directive and assess the need for any further amendments to that Directive with regard to systems governed by the laws of a third country."

Line 763:

"Article 2 (Amendment to Directive 98/26/EC)"

Lines 764 to 781: deleted

Line 781a:

"Article 12a

By [24 months after the entry into force of this Directive] the Commission shall review how the Member States applied this Directive to their domestic institutions which participate directly in systems governed by the law of a third country and to collateral security provided in connection with participation in such systems. The Commission shall assess in particular the need for any further amendments to this Directive with regard to systems governed by the law of a third country. The Commission shall submit a report thereon to the European Parliament and the Council, accompanied where appropriate by proposals for revision of this Directive."

5. Insolvency

Article 32a BRRD:

"Article 32a

Institutions not subject to resolution action

Member States shall ensure that an institution or entity referred to in points (b), (c) or (d) of Article 1(1) in relation to which the resolution authority considers that the conditions in Article 32(1)(a) and 32(1)(b) are met, but a resolution action is not in the public interest in accordance with point (c) of Article 32(1) shall be wound up in an orderly manner in accordance with the applicable national law."

Recital 27a BRRD:

"(27a) In order to enable the effective application of the powers to reduce, write down or convert own funds items without breaching creditors' safeguards under this Directive, Member States should ensure that claims resulting from own funds items rank in normal insolvency proceedings below any other subordinated claims. Instruments which are only partly recognised in own funds should still be treated as claims resulting from own funds for their whole amount. Partial recognition could be a result, for instance, of the application of grandfathering provisions which partly derecognise an instrument or because of the application of the amortisation calendar laid down for Tier 2 instruments in Regulation (EU) N°575/2013."

Art. 48 paragraph 6a BRRD:

"6a. Member States shall ensure that, for entities referred to in points (a) to (d) of the first subparagraph of Article 1(1), all claims resulting from own funds items have, in national laws governing normal insolvency proceedings, a lower priority ranking than any claim that does not result from an own funds item.

For the purposes of the first subparagraph, to the extent that an instrument is only partly recognised as an own funds item, the whole instrument shall be treated as a claim resulting from an own funds item and rank lower than any claim that does not result from an own funds item."

6. Selling of eligible liabilities to retail clients

Art 44a BRRD:

"Article 44a

Selling of eligible liabilities to retail clients

1. Member States shall ensure that the seller of subordinated eligible liabilities shall not sell such a position to a retail client, as defined in point 11 of Article 4(1) of Directive 2014/65/EU, unless all of the following conditions are fulfilled:

(a) the seller of the eligible liability has performed a suitability test in accordance with Article 25(2) of Directive 2014/65/EU;

(b) the seller of the eligible liability is satisfied, on the basis of the test referred to in point (a), that the eligible liability is suitable for that retail client;

(c) the seller of the eligible liability immediately communicates in a report to the retail client the outcome of the suitability test.

2. Where the conditions set out in paragraph 1 are fulfilled and the financial instrument portfolio of that retail client does not exceed EUR 500 000, the seller shall ensure, on the basis of the information provided by the retail client in accordance with paragraph 3, that the retail client does not invest an aggregate amount exceeding 10 % of that client's financial instrument portfolio in subordinated eligible liabilities, and that initial investment amount invested in one or more subordinated eligible liabilities instruments is at least EUR 10 000.

3. The retail client shall provide the seller with accurate information on the retail client's financial instrument portfolio, including any investments in eligible liabilities.

4. For the purposes of paragraphs 2 and 3, the retail client's financial instrument portfolio shall include cash deposits and financial instruments, but shall exclude any financial instruments that have been given as collateral.

5. Member States may derogate the requirements set out in paragraph 2 and instead set a minimum denomination amount of at least EUR 50 000 for subordinated eligible liabilities, taking into account the market conditions and practices of that Member State as well as existing consumer protection measures within the jurisdiction of that Member State.

6. Where the value of total assets of entities referred to in Article 1(1) that are established in a Member State does not exceed EUR 25 billion, that Member State may decide that the minimum denomination amount of instruments referred to in paragraph (5) is at least EUR 10 000.

This paragraph shall not apply to eligible liabilities issued before [entry into force of CRR2]."

1. Home-Host/GSII score

Recital 56 CRR (line 74): deleted

Recital 67a CRR (line 89):

"(67) Since the objectives of this Regulation, namely to reinforce and refine already existing Union legislation ensuring uniform prudential requirements that apply to credit institutions and investment firms throughout the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives."

Art. 7 CRR (lines 215 to 245): deleted

Art. 8 (1) to (3) CRR (lines 246 to 251): deleted.

Art. 8 (4) and (5) CRR (lines 252-256) are replaced:

"4. Credit institutions and investment firms that are authorised to provide the investment services and activities listed in points (3) and (6) of Section A of Annex I to Directive 2004/39/EC shall comply with the obligations laid down in Part Six on an individual basis. Institutions which are authorised in accordance with Article 14 of Regulation (EU) No 648/2012 shall not be required to comply with the obligations laid down in Article 413(1). Pending the report from the Commission in accordance with Article 508(3), competent authorities may exempt investment firms from complying with the obligations laid down in Part Six taking into account the nature, scale and complexity of the investment firms' activities."

"5. Investment firms referred to in Article 95(1) and Article 96(1), institutions for which competent authorities have exercised the derogation specified in Article 7(1) or (3), and institutions which are authorised in accordance with Article 14 of Regulation (EU) No 648/2012, shall not be required to comply with the obligations laid down in Part Seven on an individual basis."

Art. (8) (1) (b) CRR (lines 257-258):

"(b) the parent institution on a consolidated basis or the subsidiary institution on a sub-consolidated basis monitors and has oversight at all times over the liquidity positions, and the funding positions where the NSFR set out in title IV of part Six is waived, of all institutions within the group or sub-group, that are subject to the waiver and ensures a sufficient level of liquidity, and of stable funding where the NSFR set out in title IV of part Six is waived, for all of these institutions;"

The text of the Commission's proposal in Art 8 (1) (c), Art 8 (1) (d) and Art 8 (2) CRR introductory part, (lines 259-261) - deleted

The text of the Commission's proposal in lines 262 to 283 is replaced as follows:

In Article 8 CRR paragraph 3, points (b) and c are replaced by the following:

"(b) the distribution of amounts, location and ownership of the required liquid assets to be held within the single liquidity sub-group where the LCR as defined in delegated regulation (EU) No 2015/61 is waived and the distribution of amounts and location of available stable funding within the single liquidity sub-group where the NSFR set out in title IV of part Six of this regulation is waived;

(c) the determination of minimum amounts of liquid assets to be held by institutions for which the application of the LCR as defined in delegated regulation (EU) No 2015/61 is waived and the determination of minimum amounts of available stable funding to be held by institutions for which the application of the NSFR set out in title IV of part Six of this regulation is waived;"

Art. 8a CRR as of the EP text (lines 284-291): deleted.

Art. 92b(1) CRR (line 837):

"Institutions that are material subsidiaries of non-EU G-SIIs and that are not resolution entities shall at all times satisfy a requirement for own funds and eligible liabilities equal to 90% of the requirements for own funds and eligible liabilities laid down in Article 92a."

Art. 92b (2new) CRR (line 839) deleted

Art. 493(3) (c) CRR (line 4251 and 4252)

"(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 and qualifying holdings, 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. Exposures that do not meet those criteria, whether or not exempted from Article 395(1) of this Regulation, shall be treated as exposures to a third party;"

Art. 3 - para. 2 - point d CRR (line 4578): EP text deleted.

Art. 513a CRR (lines 4486 to 4491): EP text deleted.

Recital 17a CRD (line 33): deleted.

Recital 23c CRD (line 43)

“(23c) According to the assessment methodology for G-SIIs published by the Basel Committee, the cross jurisdictional claims and liabilities of an institution are indicators of its global systemic importance and of the impact that its failure can have on the global financial system. These indicators reflect the specific concerns, for instance, about the greater difficulty in coordinating the resolution of institutions with significant cross-border activities. The progress made in terms of the common approach to resolution resulting from the reinforcement of the single rulebook and from the establishment of the Single Resolution Mechanism, have significantly developed the ability to orderly resolve cross-border groups within the Banking Union. Therefore and without prejudice to the capacity of competent or designated authorities to exercise their supervisory judgment, an alternative score reflecting this progress should be calculated and competent or designated authorities should take it into consideration when assessing the systemic importance of credit institutions, without affecting the data supplied to the Basel Committee for the determination of international denominators. EBA should prepare updated draft regulatory technical standards to specify the additional identification methodology for G-SIIs to allow the recognition of the specificities of the integrated European resolution framework within the context of the SRM. This updated methodology shall be used solely for the purposes of the calibration of the G-SII buffer.”

Art. 131(2a) CRD (lines 545 to 549)

"(2a) An additional identification methodology for G-SIIs shall be based on the following categories

(a) the categories referred to in points (a) to (d) of paragraph 2;

(b) cross-border activity of the group, excluding the group's activities across participating Member States as defined in Article 4 of Regulation (EU) No 806/2014 .

Each category shall receive an equal weighting and shall consist of quantifiable indicators. For the categories referred to in point (a) the indicators shall be the same as the corresponding indicators determined pursuant to paragraph 2.

The additional identification methodology shall produce an additional overall score for each entity as referred to in paragraph 1 assessed, on the basis of which competent or designated authorities may take one of the measures referred to in point (c) of paragraph 10."

Art. 131(10) CRD (lines 571a to 571d)

"10. Without prejudice to paragraphs 1 and 9 and using the sub-categories and cut-off scores referred to in paragraph 9, the competent authority or the designated authority may, in the exercise of sound supervisory judgment:

(a) re- allocate a G-SII from a lower sub-category to a higher sub-category;

(b) allocate an entity as referred to in paragraph 1 that has an overall score as referred to in paragraph 2 that is lower than the cut-off score of the lowest sub-category to that sub-category or to a higher sub-category, thereby designating it as a G-SII.”

(c) taking into account the Single Resolution Mechanism, on the basis of the additional overall score referred to in paragraph 2a re-allocate a G-SII from a higher sub-category to a lower sub-category."

Art. 18(6) to (7) BRRD (Lines 171- 178)

"6. In the absence of a joint decision within the period referred to in paragraph 5, the group-level resolution authority, after consulting the resolution authorities of the resolution entities, where different, shall make its own decision on the appropriate measures to be taken in accordance with Article 17(4) at the group level.

The decision shall be fully reasoned and shall take into account the views and reservations of other resolution authorities. The decision shall be provided to the Union parent undertaking by the group-level resolution authority.

If, at the end of the relevant period referred to in paragraph 5, any resolution authority has referred a matter mentioned in paragraph 9 of this Article to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the group-level resolution authority, shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The relevant period referred to in paragraph 5 shall be deemed to be the conciliation period within the meaning of that Regulation. The EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the relevant period referred to in paragraph 5 or after a joint decision has been reached. In the absence of an EBA decision, the decision of the group-level resolution authority shall apply.

6a. In the absence of a joint decision within the period referred to in paragraph 5, the resolution authority of the relevant resolution entity shall make its own decision on the appropriate measures to be taken in accordance with Article 17(4) at the resolution group level.

The decision shall be fully reasoned and shall take into account the views and reservations of resolution authorities of other entities of the same resolution group and the group-level resolution authority. The decision shall be provided to the resolution entity by the relevant resolution authorities.

If, at the end of the relevant period referred to in paragraph 5, any resolution authority has referred a matter mentioned in paragraph 9 of this Article to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority of the resolution entity shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The relevant period referred to in paragraph 5 shall be deemed to be the conciliation period within the meaning of that Regulation. The EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the relevant period referred to in paragraph 5 or after a joint decision has been reached. In the absence of an EBA decision, the decision of the resolution authority of the resolution entity shall apply.

7. In the absence of a joint decision, the resolution authorities of subsidiaries that are not resolution entities shall make their own decisions on the appropriate measures to be taken by subsidiaries at individual level in accordance with Article 17(4). The decision shall be fully reasoned and shall take into account the views and reservations of the other resolution authorities. The decision shall be provided to the subsidiary and to the resolution entity of the same resolution group concerned, to the resolution authority of that resolution entity and, where different, to the group-level resolution authority.

If, at the end of the relevant period referred to in paragraph 5, any resolution authority has referred a matter mentioned in paragraph 9 of this Article to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority of the subsidiary shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA. The relevant period referred to in paragraph 5 shall be deemed to be the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the relevant period referred to in paragraph 5 or after a joint decision has been reached. In the absence of an EBA decision, the decision of the resolution authority of the subsidiary shall apply."

Art. 44 (2)(h) BRRD (lines 231 to 233)

„(h) liabilities to institutions or entities referred to in point (b), (c) or (d) of Article 1(1) of this Directive that are part of the same resolution group without being themselves resolution entity, regardless of their maturities except where these liabilities rank below ordinary unsecured liabilities under the relevant national law setting the hierarchy of claims applicable on the date of transposition of this Directive.

Where the previous subparagraph applies, the resolution authority of the relevant subsidiary that is not a resolution entity shall assess whether the amount of instruments complying with Article 45g(3) is sufficient to support the implementation of the preferred resolution strategy.“

Art. 44(3) (2a) BRRD (lines 237, 238)

"Resolution authorities shall carefully assess whether liabilities to institutions or entities referred to in point (b), (c) or (d) of Article 1(1) of this Directive that are part of the same resolution group without being themselves resolution entities and that are not excluded from the application of the write-down and conversion powers under paragraph (2)(h) of this Article should be excluded or partially excluded under points (a) to (d) of this paragraph to ensure the effective implementation of the resolution strategy."

Art. 45b(2a) BRRD (Lines 266-271)

"2a. Liabilities issued by a subsidiary established in the Union that is part of the same resolution group as the resolution entity to an existing shareholder that is not part of the same resolution group shall be included in the amount of own funds and eligible liabilities of resolution entities provided that all of the following conditions are met:

a) they are issued in accordance with Article 45g(3)(a);

b) the exercise of the power of write-down or convert in relation to such liabilities in accordance with Articles 59 or 62 does not affect the control of the subsidiary by the resolution entity;

c) they do not exceed an amount determined by subtracting the amount referred to in point (i) from the amount referred to in point (ii):

i. the sum of the liabilities issued to and bought by the resolution entity either directly or indirectly through other entities in the same resolution group and the amount of own funds issued in accordance with Article 45g(3)(b);

ii. the amount required in accordance with Article 45g(1)."

Art. 45c (1) (a) BRRD (Line 311)

"(a) the need to ensure that the resolution group can be resolved by the application of the resolution tools including, where appropriate, the bail-in tool, in a way that meets the resolution objectives;"

Art. 45c(2) subparagraph 1 (b) BRRD (Line 323)

"(b) the resolution entity and its subsidiaries that are institutions, but not resolution entities are recapitalised to a level necessary to enable them to continue to comply with the conditions for authorisation and to carry out the activities for which they are authorised under Directive 2013/36/EU, Directive 2014/65/EU or equivalent legislation for an appropriate period of time not longer than one year ('recapitalisation')."

Art. 45c(3) subparagraph 4 BRRD (Line 338)

"When setting the individual requirement provided in point (b) of the first sub-paragraph the resolution authority shall take into account the requirements referred to in Articles 37(10), 44(5) and 44(8) of Directive 2014/59/EU."

Art. 45c (4) BRRD (Line 358-369)

"4. For entities that are not themselves resolution entities, the amount referred to in paragraph 2 shall composed of the following:

(a) the sum of:

(i) the amount of losses to be absorbed that corresponds to the requirements referred to in Article 92(1) (c) of Regulation (EU) No 575/2013 and Article 104a of Directive 2013/36/EU of the entity; and

(ii) a recapitalisation amount that allows the entity to restore compliance with its total capital ratio requirement referred in Article 92(1)(c) of Regulation (EU) No 575/2013 and its requirement referred to in Article 104a of Directive 2013/36/EU after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 59 and the resolution of the resolution group;

(b) the sum of:

(i) the amount of losses to be absorbed that corresponds to the entity's leverage ratio requirement referred to in the Article 92(1)(d) of Regulation (EU) No 575/2013; and

(ii) a recapitalisation amount that allows the entity to restore compliance with its leverage ratio requirement referred to in the Article 92(1)(d) of Regulation (EU) No 575/2013- after the exercise of the power to write down or convert relevant capital instruments and eligible liabilities in accordance with Article 59 and the resolution of the resolution group.

For the purposes of point (a) of Article 45(2)(a), the requirement referred to in Article 45(1) shall be expressed in percentage terms as the amount calculated in accordance with point (a) divided by the total risk exposure amount.

For the purposes of point (b) of Article 45(2)(b), the requirement referred to in Article 45(1) shall be expressed in percentage terms as the amount calculated in accordance with point (b) divided by the leverage ratio exposure measure.

When setting the individual requirement provided in point (b) of the first sub-paragraph the resolution authority shall take into account the requirements referred to in Articles 37(10), 44(5) and 44(8) of Directive 2014/59/EU."

Art. 45g(2) BRRD (lines 425 to 428): delete

Art. 45g (3) BRRD (Lines 430-436):

"3. The requirement shall be met with one or more of the following:

(a) liabilities that:

(i) are issued to and bought by the resolution entity either directly or indirectly through other entities in the same resolution group that bought the liabilities from the entity subject to this Article or by an existing shareholder that is not part of the same resolution group as long as the exercise of the power of write down or convert in accordance with Articles 59 to 62 does not affect the control of the subsidiary by the resolution entity;

(ii) fulfil the eligibility criteria referred to in Article 72a, except for points (b), (c), (k), (l) and (m) of Article 72b(2) and Article 72b(3) to (5) of Regulation (EU) No 575/2013;

(iii) in normal insolvency proceedings have the same ranking as own funds instruments or rank below liabilities that do not meet the condition referred to in point (i) and are not eligible for own funds requirements;

(iv) are subject to the power of write down or conversion in accordance with Articles 59 to 62 that is consistent with the resolution strategy of the resolution group, notably by not affecting the control of the subsidiary by the resolution entity;"

Art. 45g (5) BRRD (lines 453, 454):

"(a) the subsidiary and the resolution entity are established in the same Member State and are part of the same resolution group;

(b) the resolution entity complies with the requirement referred to in Article 45f;"

Art. 45g (5a) BRRD (Lines 460-466):

"5a.The resolution authority of a subsidiary that is not a resolution entity may also fully waive the application of this Article to that subsidiary where:

(a) the subsidiary and its parent undertaking are established in the same Member State and are part of the same resolution group;

(b) the parent undertaking complies on a sub-consolidated basis, in the Member State of the subsidiary, with the requirement referred to in Article 45;

(c) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the parent undertaking to the subsidiary in respect of which a determination has been made in accordance with Article 59(3), in particular when resolution action or powers referred to in Article 59(1) are taken in respect of the parent undertaking;

(d) the parent undertaking satisfies the competent authority regarding the prudent management of the subsidiary and has declared, with the consent of the competent authority, that it guarantees the commitments entered into by the subsidiary, or the risks in the subsidiary are of no significance;

(e) the risk evaluation, measurement and control procedures of the parent undertaking cover the subsidiary;

(f) the parent undertaking holds more than 50% of the voting rights attached to shares in the capital of the subsidiary or has the right to appoint or remove a majority of the members of the management body of the subsidiary, except for credit institutions permanently affiliated to a central body."

Art. 45g (6) BRRD, (lines 467 to 474):

"6. Where the conditions laid down in points (a) and (b) of paragraph 5 are met, the resolution authority of a subsidiary may permit the requirement to be met in full or in part with a guarantee provided by the resolution entity, which fulfils the following conditions:

(a) the guarantee is provided for at least the equivalent amount as the amount of the requirement for which it substitutes;

(b) the guarantee is triggered when the subsidiary is unable to pay its debts or other liabilities as they fall due or a determination has been made in accordance with Article 59(3) in respect of the subsidiary, whichever is the earliest;

(c) the guarantee is collateralised through a financial collateral arrangement as defined in point (a) of Article 2(1) of Directive 2002/47/EC for at least 50% of its amount;

(e) the collateral backing the guarantee fulfils the requirements of Article 197 of Regulation (EU) No 575/2013, which, following appropriately conservative haircuts, is sufficient to fully cover the amount guaranteed;

(f) the collateral backing the guarantee is unencumbered and in particular is not used as collateral to back any other guarantee;

(g) the collateral has an effective maturity that fulfils the same maturity condition as that for referred to in Article 72c(1) of Regulation (EU) No 575/2013; and,

(h) there are no legal, regulatory or operational barriers to the transfer of the collateral from the resolution entity to the relevant subsidiary, including when resolution action is taken in respect of the resolution entity. Upon request of the resolution authority the resolution entity shall provide an independent written and reasoned legal opinion or otherwise satisfactorily demonstrate that there are no legal, regulatory or operational barriers to the transfer of collateral to the relevant subsidiary."

Art. 45g (8) BRRD (lines 475 to 477):

"8. EBA shall develop draft regulatory technical standards further specifying methods to avoid that instruments recognised for the purposes of Article 45g indirectly subscribed, in part or in full, by the resolution entity hamper the smooth implementation of the resolution strategy. Such methods should notably ensure a proper upstream of loses to the resolution entity and down-streaming of capital to entities that are part of the resolution group but not themselves resolution entities, and provide a mechanism to avoid double counting of eligible instruments recognised for the purpose of Article 45g. They shall consist of a deduction regime or an equivalently robust approach and they shall ensure to entities that are not themselves the resolution entity an outcome equivalent to that of a full direct subscription by the resolution entity of eligible instruments recognised for the purpose of Article 45g.

EBA shall submit those draft regulatory technical standards to the Commission by [6 months after entry into force of this Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010."

Art. 45g1 (a) BRRD (Line 480)

"(a) the credit institutions and the central body are subject to supervision by the same competent authority and are established in the same Member State and are part of the same resolution group;"

Art. 45h BRRD (Lines 486-531):

"Article 45h

Procedure for determining the requirement

1. The resolution authority of the resolution entity, the group-level resolution authority, where different from the former, and the resolution authorities responsible for the subsidiaries of a resolution group subject to the requirement referred to in Article 45g on an individual basis shall do everything within their power to reach a single joint decision on all of the following:

(a) the amount of the requirement applied at the consolidated resolution group level for each resolution entity;

(b) the amount of the requirement applied to each subsidiary of the resolution entity on an individual level.

The joint decision shall ensure compliance with Article 45f and Article 45g, be fully reasoned and provided to:

(c) the resolution entity by its resolution authority;

(d) the subsidiaries of each resolution entity by their respective resolution authorities

(e) the Union parent undertaking of the group by the resolution authority of the resolution entity, when that Union parent undertaking is not itself a resolution entity from the same resolution group.

The joint decision taken in accordance with this Article may provide that, where consistent with the resolution strategy and no sufficient instruments complying with Article 45g(3) have been bought directly or indirectly by the resolution entity, the requirements referred to in Article 45c(4) are partially met by the subsidiary in compliance with Article 45g(3) with instruments issued to and bought by entities not belonging to the resolution group.

2. Where more than one G-SII entity belonging to the same G-SII are resolution entities, the resolution authorities referred to in the first subparagraph shall discuss and, where appropriate and consistent with the G-II's resolution strategy, agree on the application of Article 72e of Regulation (EU) Regulation (EU) No 575/2013 and any adjustment to minimise or eliminate the difference between the sum of the amounts referred to in point (a) of Article 45d(3) and Article 12 of Regulation (EU) No 575/2013 for individual resolution entities and the sum of the amounts referred to in point (b) of Article 45d(3) and Article 12 of Regulation (EU) No 575/2013.

Such an adjustment may be applied under the following conditions:

(a) the adjustment may be applied in respect of differences in the calculation of the total risk exposure amounts between the relevant Member States by adjusting the level of the requirement;

(b) the adjustment shall not be applied to eliminate differences resulting from exposures between resolution groups.

The sum of the amounts referred to in point (a) of Article 45d(3) and Article 12 of Regulation (EU) No 575/2013 for individual resolution entities shall not be lower than the sum of the amounts referred to in point (b) of Article 45d(3) and Article 12 of Regulation (EU) No 575/2013.

3. In the absence of such a joint decision within four months, a decision shall be taken in accordance with paragraphs 4 to 6.

4. Where a joint decision is not taken within four months because of a disagreement concerning the consolidated resolution group requirement, a decision shall be taken on that requirement by the resolution authority of the resolution entity after having duly taken into account:

(a) the assessment of subsidiaries performed by the relevant resolution authorities;

(b) the opinion of the group-level resolution authority, where different from the resolution authority of the resolution entity.

Where, at the end of the four-month period, any of the resolution authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authority of the resolution entity shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in accordance with the decision of EBA.

The decision of the EBA shall take into account points (a), (b) and (c) of the first subparagraph.

The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation.

EBA shall take its decision within one month.

The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached.

In the absence of an EBA decision within one month, the decision of the resolution authority of the resolution entity shall apply.

5. Where a joint decision is not taken within four months because of a disagreement concerning the level of the requirement to be applied to the resolution group's subsidiaries subject to the requirement referred to in Article 45g on an individual basis, the decision shall be taken by the respective resolution authorities of the subsidiaries where all of the following conditions are fulfilled:

(a) the opinion of the resolution authority of the resolution entity has been duly taken into account

(b) the opinion of the group-level resolution authority has been duly taken into account where that authority is different from the resolution authority of the resolution entity;

(c) compliance with Article 45g(2) has been assessed.

Where, at the end of the four-month period, the resolution authority of the resolution entity or the group-level resolution authority has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the resolution authorities responsible for the subsidiaries on an individual basis shall defer their decisions and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take their decisions in accordance with the decision of EBA. The decision of the EBA shall take into account points (a), (b) and (c) of the first subparagraph.

The four-month period shall be deemed to be the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month.

The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached.

The resolution authority of the resolution entity or the group-level resolution authority shall not refer the matter to the EBA for binding mediation where the level set by the resolution authority of the subsidiary:

(a) is within 2% of RWAs of the requirement referred to in Article 45f; and

(b) the level set by the resolution authority of the subsidiary complies with Article 45c(4).

In the absence of an EBA decision within one month, the decisions of the resolution authorities of the subsidiaries shall apply.

The joint decision and any decisions taken in the absence of a joint decision shall be reviewed and where relevant updated on a regular basis.

6. Where a joint decision is not taken within four months because of a disagreement concerning the level of the consolidated requirement and the level of the requirement to be applied to the resolution group's subsidiaries on an individual basis, the following shall apply:

(a) a decision shall be taken on the level of the requirement to be applied to the resolution group's subsidiaries on an individual basis in accordance with paragraph 5;

(b) a decision shall be taken on the consolidated requirement in accordance with paragraph 4.

7. The joint decision referred to in paragraph 1 and any decisions taken by the resolution authorities referred to in paragraphs 4, 5 and 6 in the absence of a joint decision shall be binding on the resolution authorities concerned.

The joint decision and any decisions taken in the absence of a joint decision shall be reviewed and where relevant updated on a regular basis.

8. Resolution authorities, in coordination with competent authorities, shall require and verify that entities meet the requirement referred to in article 45(1) , and shall take any decision pursuant to this Article in parallel with the development and the maintenance of resolution plans.

9. The resolution authority of the resolution entity shall inform EBA of the minimum requirement for own funds and eligible liabilities that have been set:

(a) at the consolidated resolution group level;

(b) at the level of the resolution group's subsidiaries on an individual basis."

Art. 59 (1) BRRD (Lines 645-651):

"1. The power to write down or convert relevant capital instruments and eligible liabilities may be exercised either:

(a) independently of resolution action; or

(b) in combination with a resolution action, where the conditions for resolution specified in Articles 32 and 33 are met.

Where relevant capital instruments and eligible liabilities have been purchased by the resolution entity indirectly through other entities in the same resolution group, the power to write down or convert shall be exercised together with the exercise of the same power at the level of the parent undertaking of the entity concerned or subsequent parents that are not resolution entities so that the losses are effectively passed on to and the entity concerned is recapitalised by the resolution entity.

1a. The power to write down or convert eligible liabilities independently of resolution action may be exercised only in relation to eligible liabilities that meet the conditions referred to in Article 45g(3)(a), except the condition related to the remaining maturity of liabilities as regulated by Article 72c(1) of Regulation (EU) No 575/2013.

When that power is exercised, Member States shall ensure that the write-down or conversion is taken in accordance with the principle referred to in point (g) of Article 34(1).

After the exercise of the power to write down or convert eligible liabilities independently of resolution action, the valuation provided for in Article 74 shall be carried out and Article 75 shall apply.

1b. Where a resolution action is taken in relation a resolution entity or, in exceptional circumstances in deviation from the resolution plan, in relation to an entity that is not a resolution entity, the amount that is reduced, written down or converted in accordance with Article 60(1) at the level of such an entity shall count towards the thresholds laid down in Articles 37(10) and point (a) of Article 44(5) applicable to the entity concerned."

Art. 60 (1) (d) BRRD (Lines 657)

"(d) the principal amount of eligible liabilities referred to in Article 59(1) is written down or converted into Common Equity Tier 1 instruments or both, to the extent required to achieve the resolution objectives set out in Article 31 or to the extent of the capacity of the relevant eligible liabilities, whichever is lower."

Art. 61 (3) BRRD new subparagraph (Line 665)

"Where the relevant capital instruments or liabilities referred to in Article 59(1) are recognised for the purposes of meeting the requirement referred to in Article 45g on an individual basis, the authority responsible for making the determination referred to in Article 59(3) of this Directive shall be the appropriate authority of the Member State where the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) has been authorised in accordance with Title III of Directive 2013/36/EU."

Art. 62 (1) BRRD (Lines 666 - 671)

"Member States shall ensure that, before making a determination referred to in point (b), (c), (d) or (e) of Article 59(3) in relation to a subsidiary that issues relevant capital instruments or liabilities referred to in Article 59(1) for the purposes of meeting the requirement referred to in Article 45g on an individual basis or relevant capital instruments that are recognised for the purposes of meeting the own funds requirements on an individual or consolidated basis, appropriate authorities comply with the following requirements:

(a) an appropriate authority that is considering whether to make a determination referred to in point (b), (c), (d) or (e) of Article 59(3), after having consulted the resolution authority of the relevant resolution entity, notifies, within 24 hours :

(i) the consolidating supervisor and, if different, the appropriate authority in the Member State where the consolidating supervisor is located;

(ii) resolution authorities of other entities within the same resolution group that directly or indirectly purchased liabilities referred to in Article 45g(3) from the entity subject to Article 45g(1);

(b) an appropriate authority that is considering whether to make a determination referred to in point (c) of Article 59(3) notifies, without delay, the competent authority responsible for each institution or entity referred to in point (b), (c) or (d) of Article 1(1) that has issued the relevant capital instruments or liabilities in relation to which the write down or conversion power is to be exercised if that determination were made, and, if different, the appropriate authorities in the Member States where those competent authorities and the consolidating supervisor are located."

Art. 62 (4) BRRD first sentence (Line 673):

"Where a notification has been made pursuant to paragraph 1, the appropriate authority, after consulting the authorities notified in accordance with points (a) (i) or b) of that paragraph, shall assess the following matters:"

2. Credit Risk

8.1 Massive disposals

Article 500 CRR (4295a and 4295b):

"Article 500

Adjustment for massive disposals

(1) By way of derogation from Article 181(1)(a), an institution may adjust its LGD estimates by partly or fully offsetting the effect of massive disposals of defaulted exposures on realised LGDs up to the difference between the average realised LGDs for comparable exposures in default that have not been finally liquidated and the average realised LGDs including on the basis of the losses realised due to the massive disposals, as soon as all of the following conditions are fulfilled:

(a) the institution has notified to the competent authority a plan providing the scale, composition and the dates of the disposals of defaulted exposures
(b) the dates of the disposals of defaulted exposures are after 23 November 2016 but not later than [date of entry into force + 3 years];
(c) the cumulative amount of defaulted exposures disposed since the first date for disposals according to the plan referred to in point (a) has surpassed [20%] of the cumulative amount of all observed defaults as of the date of the first disposal referred to in points (a) and (b).

The adjustment referred to in the first subparagraph may only be carried out until [date of entry into force + 3 years] and its effects may last for as long as the corresponding exposures are included in the institution's own LDG estimates.

(2) Institutions shall notify the competent authority without undue delay when the condition of point (c) of paragraph (1) has been fulfilled."

Article 3 CRR (4574a)

"(aa), the provisions in points 4295a and 4295b, which shall apply from [date of entry into force of this amending Regulation]."

8.2 Pensions and salary-backed loans

In Article 123 CRR (lines 1095 to 1100), subparagraph 3a is inserted:

"3a. Exposures due to loans granted by a credit institution to pensioners of employees with a permanent contract against the unconditional transfer of part of the borrower's pension or salary to that credit institution shall be assigned a risk weighting of 35%, provided that all the following conditions are fulfilled:

(i) in order to repay the loan, the borrower authorises unconditionally the employer or the pension fund to make direct payments to the institution by deducting the monthly payments on the loan from the borrower's monthly salary or pension;

(ii) the risks of death, inability to work, unemployment or reduction of the net monthly salary or pension of the borrower are properly covered through an insurance policy underwritten by the borrower to the benefit of the credit institution;

(iii) monthly payments on the all loans to the borrower meeting the conditions in (i) and (ii) do not in aggregate exceed 20% of the borrower's net monthly salary or pension;

(iv) The maximum original maturity of the loan is equal to or less than 10 years."

3. Proportionality

9.1. Definitions

Article 4 CRR:

"Article 4

Definitions

(1) […]

(144a) "small and non-complex institution" means an institution that meets all of the following conditions, provided that it is not a large institution as defined in point (144b):

(a) the total value of its assets on an individual basis or, where applicable, on a consolidated basis in accordance with this Regulation and Directive 2013/36/EU is on average equal to or less than the threshold of EUR 5 billion over the four-year period immediately preceding the current annual reporting period; (b) the institution is subject to no or simplified obligations in relation to recovery and resolution planning in accordance with article 4 of Directive 2014/59/EU;

(c) the institution's trading book business is classified as small within the meaning of Article 94(1);

(d) the total value of the institution's derivative positions held with trading intent does not exceed 2% of its total on- and off-balance sheet assets, the total value of its overall derivative positions does not exceed 5%;

(e) more than 75% of both the institution's consolidated total assets and liabilities, excluding in both cases the intragroup exposures, relate to activities with counterparties located in the European Economic Area;

(f) the institution does not use internal models to meet the prudential requirements that it is subject to in accordance with this Regulation except for subsidiaries using internal models developed at the group level, provided that the group is subject to the disclosure requirements laid down in article 433a or in article 433c at consolidated level.

(g) the institution has not communicated to the competent authority an objection to being classified as a small and non-complex institution;

(h) the competent authority has not decided that the institution is not to be considered a small and non-complex institution based on an analysis of its size, interconnectedness, complexity or risk profile;

(144b) '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 another 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 in which it is established, one of the three largest institutions in terms of total value of assets;

(d) the total value of the institution's assets on an individual basis or, where applicable, on the basis of its consolidated situation in accordance with this Regulation and Directive 2013/36/EU is equal to or larger than EUR 30 billion;

(144c) 'large subsidiary' means a subsidiary that qualifies as a large institution;

(144d) 'non-listed institution' means an institution that has not issued securities that are admitted to trading on a regulated market of any Member State, within the meaning of point 21 of article 4(1) of Directive 2014/65/EU.

(144i) For the purposes of Part eight, 'financial report' shall be understood within the meaning of Articles 4 and 5 in Directive 2004/109/EC of the European Parliament and of the Council."

9.2 Disclosure

[References to Articles shall be updated once the final numbering in Part 8 is completed]

Article 432 CRR:

"Article 432

Non-material, proprietary or confidential information

[…]

(2) […] Information shall be regarded as proprietary to institutions where disclosing it publicly would undermine their competitive position. Proprietary information may include information on products or systems that would render the investments of institutions therein less valuable, if shared with competitors.

Information shall be regarded as confidential where the institutions are obliged by customers or other counterparty relationships to keep that information confidential."

Art. 433a to 433c CRR:

"Article 433a

Disclosures by large institutions

1. Large institutions shall disclose the information outlined below with the following frequency:

(a) all the information required under this Part on an annual basis;

(b) on a semi-annual basis the information referred to in:

(i) point (a) of Article 437;

(ii) points (e) to (l) of Article 439;

(iii) Article 440;

(iv) points (c), (e), (f) and (g) of Article 442;

(v) point (e) of Article 444;

(vi) Article 445,

(vii) point (a) and (b) of Article 448(1);

(viii) point (j) to (l) of Article 449;

(ix) points (a) and (b) of Article 451(1);

(x) Article 451a(3);

(xi) point (h) of Article 452(1);

(xii) points (f) to (j) of Article 453; and

(xiii) points (d), (e) and (g) of Article 455.

(c) on a quarterly basis the information referred to in:

(i) points (d) and (h) of Article 438;

(ii) the key metrics referred to in Article 447 and

(ii) Article 451a(2).

2. By way of derogation from paragraph 1, large institutions other than G-SIIs that are non-listed institutions shall disclose the information outlined below with the following frequency:

(a) all the information required under this Part on an annual basis;

(b) the key metrics referred to in Article 447 on a semi-annual basis.

3. Large institutions subject to Articles 92a or 92b shall disclose the information required under Article 437a on a semi-annual basis, except for the key metrics referred to in point (h) of Article 447 which are to be disclosed on a quarterly basis.

Article 433b

Disclosures by small and non-complex institutions

1. Small and non-complex institutions shall disclose the information outlined below with the following frequency:

(a) on an annual basis the information referred to in:

(i) points (a), (f) and (g) of Article 435(1);

(ii) point (d) of Article 438; and

(iii) points (a) to (d), (h), (i), (j) of Article 450(1).

(b) on a semi-annual basis the key metrics referred to in Article 447;

2. By way of derogation from paragraph 1, small and non-complex institutions that are non-listed institutions shall disclose the key metrics referred to in Article 447 on an annual basis.

Article 433c

Disclosures by other institutions

1. Institutions that are not subject to Articles 433a or 433b shall disclose the information outlined below with the following frequency:

(a) all the information required under this Part on an annual basis;

(b) the key metrics referred to in Article 447 on a semi-annual basis.

2. By way of derogation from paragraph 1, other institutions that are non-listed institutions shall disclose the following information on an annual basis:

(a) points (a), (f) and (g) of Article 435(1);

(b) points (a) to (c) of Article 435(2);

(c) point (a) of Article 437;

(d) points (c) and (d) of Article 438;

(e) the key metrics referred to in Article 447, and

(f) points (a) to (d), (h), (i), (j) and (k) of Article 450(1)."

9.3 Reporting

Recital 6 CRR (line 14) :

"(6) Existing risk reduction measures and, in particular, reporting and disclosure requirements should also be improved to ensure that they can be applied in a more proportionate way and that they do not create an excessive compliance burden, especially for smaller and less complex institutions. EBA shall make recommendations on how to reduce reporting requirements at least for small and non-complex institutions, which should result in an expected average cost reduction of at least 10% but ideally up to 20%."

Article 99 CRR:

(a)

"Article 99

Reporting on prudential requirements and financial information

1. Institutions shall report to their competent authorities on

   (a) own funds requirements, including the leverage ratio, as set out in Article 92 and Part Seven;

   (b) the aggregate data for each national immovable property market as referred to in Article 101(1);

   (c) liquidity requirements as set out in Article 415;

   (d) large exposures as set out in Article 394;

   (e) their level of asset encumbrance, including a breakdown by type of asset encumbrance, such as repurchase agreements, securities lending, securitised exposures or loans;

   (f) the requirements and guidance set out in Directive 2013/36/EU qualified for standardized reporting, except for any additional reporting requirement under Article 104(1)(j) of that Directive;

   (g) for institutions that qualify as resolution entities, the requirements laid down in Article 92a and 92b.

Institutions exempted in accordance with Article 6(5) shall not be subject to the reporting requirement on the leverage ratio set out in point (a) of the first subparagraph on an individual basis.

2. In addition to the reporting on prudential requirements referred to in paragraph 1, institutions shall report financial information to their competent authorities where they are one of the following:

   (a) an institution subject to Article 4 of Regulation (EC) No 1606/2002;

   (b) a credit institution that prepares its consolidated accounts in accordance with the international accounting standards pursuant to Article 5(b) of Regulation (EC) No 1606/2002.

3. Competent authorities may require credit institutions that determine their own funds on a consolidated basis in accordance with international accounting standards pursuant to Article 24(2) of this Regulation to report financial information in accordance with this Article.

4. The reporting on financial information referred to in paragraphs 2 and 3 shall only comprise information that is needed to provide a comprehensive view of the institution's risk profile and the systemic risks posed by the institution to the financial sector or the real economy as set out in Regulation (EU) No 1093/2010.

5. EBA shall develop draft implementing technical standards to specify the uniform reporting templates, the instructions and methodology on how to use the templates, the frequency and dates of reporting, the definitions and the IT solutions for the reporting referred to in paragraphs 1 to 3.

EBA shall submit to the Commission draft implementing technical standards on the matters referred to in the first subparagraph by [24 months after entry into force], except for the following items:

(a) the leverage ratio, by [12 months after entry into force];

(b) the obligations laid down in Articles 92a and 92b by [12 months after entry into force].

The reporting requirements laid down in this Article shall be applied to institutions in a proportionate manner taking into account the report referred to in paragraph 7, having regard to their size, complexity and the nature and level of risk of their activities.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

The implementing technical standards shall provide for a transitional period of no less than six months from the date of entry into force of any new reporting requirements.

6. EBA shall assess the costs and benefits of the reporting requirements laid down in Commission Implementing Regulation (EU) No 680/2014[14] in accordance with this paragraph and report its findings to the Commission by no later than [12 months after entry into force of the amending Regulation]. The assessment referred hereto shall be carried out in particular in relation to small and non-complex institutions. For these purposes, the report shall:

(a) classify institutions into categories based on their size, complexity and the nature and level of risk of their activities;

(b) measure the reporting costs incurred by each category of institutions during the relevant period to meet the reporting requirements set out in Implementing Regulation (EU) No 680/2014, taking into account the following principles:

(i) the reporting costs shall be measured as the ratio of the reporting costs relative to the institution's total costs during the relevant period;

(ii) the reporting costs shall comprise all expenditure related to the implementation and operation on an on-going basis of the reporting systems, including expenditure on staff, IT systems, legal, accounting, auditing and consultancy services;

(iii) the relevant period shall refer to each annual period during which institutions have incurred reporting costs to prepare for the implementation of the reporting requirements laid down in Implementing Regulation (EU) No 680/2014 and to continue operating the reporting systems on an on-going basis;

(c) assess whether the reporting costs incurred by each category of institutions were proportionate with regard to the benefits delivered by the reporting requirements for the purposes of prudential supervision;

(d) assess the effects of a reduction of reporting requirement on costs and supervisory effectiveness and

(e) make recommendations on how to reduce reporting requirements at least for small and non-complex institutions, which should result in an expected average cost reduction of at least 10% but ideally 20%.

[14] 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).

7. The report referred to in paragraph 6 shall be accompanied by draft implementing technical standards amending Commission Implementing Regulation (EU) No 680/2014. EBA shall submit to the Commission these draft implementing technical standards by [24 months after entry into force].

8. Competent authorities shall consult EBA on whether institutions, other than those referred to in paragraphs 2 and 3, should report on financial information on a consolidated basis in accordance with paragraph 2, provided that all of the following conditions are met:

(a) the relevant institutions are not already reporting on a consolidated basis;

(b) the relevant institutions are subject to an accounting framework in accordance with Directive 86/635/EEC;

(c) financial reporting is considered necessary to provide a comprehensive view of the risk profile of those institutions' activities and of the systemic risks they pose to the financial sector or the real economy as set out in Regulation (EU) No 1093/2010.

EBA shall develop draft implementing technical standards to specify the formats that institutions referred to in the first subparagraph shall use for the purposes set out therein.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the second subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

9. Where a competent authority considers information not covered by the implementing technical standards referred to in paragraph 5 as necessary for the purposes set out in paragraph 4, it shall notify EBA and the ESRB of the additional information it deems necessary to include in the implementing technical standards referred to in that paragraph.

10. Competent authorities may waive the requirement to submit any of the data points set out in the reporting templates specified in the implementing technical standards referred to in this Article where those data points are duplicative. For these purposes, duplicative data points shall refer to any data points which are already available to the competent authorities by means other than by collecting those reporting templates, including where those data points can be obtained from data that is already available to the competent authorities in different formats or levels of granularity; the competent authority may only grant the exceptions stated in this paragraph if data received, collated or aggregated through such alternative methods are identical to those data points which otherwise ought to be reported in accordance with the respective implementing technical standards;

Competent authorities, resolution authorities and designated authorities shall make use of data exchange wherever possible to reduce reporting requirements. The provisions on the exchange of information and professional secrecy as laid down in Title VII Chapter I Section II of Directive 2013/36/EU shall apply.

Article 101a CRR:

"Article 101a
Report on integrated system for collecting statistical and prudential data

The EBA shall prepare a report on feasibility regarding the development of a consistent and integrated system for collecting statistical, resolution and prudential data and report its findings to the Commission no later than 12 months after entry into force of the amending Regulation.

When drafting the feasibility report, EBA shall involve competent authorities, as well as authorities in charge of deposit guarantee schemes, resolution authorities and in particular the ESCB. The report shall take into account the previous work of the ESCB regarding integrated data collections and shall be based on an overall cost and benefit analysis including as a minimum:

(a) an overview of the quantity and scope of the current data collected by the competent authorities in their jurisdiction and of its origins and granularity;

(b) the establishment of a standard dictionary of the data to be collected, in order to increase the convergence of reporting requirements as regards regular reporting obligations, and to avoid unnecessary queries;

(c) the establishment of a joint committee, including as a minimum the EBA and the ESCB, for the development and implementation of the integrated reporting system;

(d) the feasibility and possible design of a central data collection point for the integrated reporting system, including requirements to ensure strict confidentiality of the data collected, strong authentication and management of access rights to the system and cybersecurity, which

  (i) contains a central data register with all statistical, resolution and prudential data in the necessary granularity and frequency for the particular institution and is updated at necessary intervals;

  (ii) serves as a point of contact for the competent authorities, where they receive, process and pool all data queries, where queries can be matched with existing collected reported data and which allows the competent authorities quick access to the requested information;

  (iii) provides additional support to the competent authorities for the transmission of data queries to the institutions and enters the requested data into the central data register;

  (iv) holds a coordinating role for the exchange of information and data between competent authorities;and

  (v) takes into account the proceedings and processes of competent authorities and transfers them into a standardized system.

By ...[one year after presentation of the report] the Commission shall, if appropriate and taking into account the EBA feasibility report referred to in this Article, submit to the European Parliament and the Council a legislative proposal for the establishment of a standardized and integrated reporting system for reporting requirements."

Article 501d (1) CRR:

"Article 501d

(1) By way of derogation from Articles 99, during the period between the date of application of this Regulation and the date of the first remittance specified in the implementing technical standards referred to in this Article, a competent authority may waive the requirement to report information in the format specified in the templates contained in Implementing Regulation (EU) No 680/2014 where those templates have not been updated to reflect the provisions in this Regulation."

9.4 sNSFR

Small and non-complex institutions may choose, with the prior approval of the competent authority, to calculate the ratio between an institution's available stable funding as referred to in Chapter 4a of this Title, and the institution's required stable funding as referred to in Chapter 4b of this Title, and expressed as a percentage.

A competent authority may require a small and non-complex institution to calculate the net stable funding requirement based on an institution's available stable funding as referred to in Chapter 3 of this Title and the required stable funding as referred to in Chapter 4 of this Title where it considers that the simplified methodology is not adequate to capture the funding risks of that institution.

In Part 6, Title IV CRR, EP Chapters 4a and 4b should be introduced into the CRR. They would derogate from Chapters 3 and 4 (NSFR) respectively. The competent authority ("CA") discretion will be anchored in an introductory paragraph before the chapters on s-NSFR.

Additional wording regarding “prior approval of the competent authority” and the CA discretion to revoke the s-NSFR option where the simplified methodology does not adequately capture the risk will be added in the chapters related to s-NSFR. Finally, other technical changes would have to be introduced to the s-NSFR to reflect all the changes made by the trilogues to the fully-fledged NSFR (both drafting and more substantial changes).

Line 3554 (Art. 1 - para. 1 - point 114b Part VI - title IV - chapter 4b new - section 2 - art. 428as - para. 1 - point a) would be deleted to reflect shifting Level 2A assets from the 15% category (EP proposal) to the 20% category to achieve the “at least as or more conservative calibration”. A new paragraph would be added to Article 428at to add those assets to the 20% category.

Line 3564 (Art. 1 - para. 1 - point 114b Part VI - title IV - chapter 4b new - section 2 - art. 428au - para. 1 - point b) would be deleted to reflect shifting Level 2B assets from the 50% category (EP proposal) to the 55% category to achieve the “at least as or more conservative calibration”.

A new Article 428aua would be introduced to create the 55% category, with those assets:

“Assets eligible as Level 2B assets in accordance Article 12 of Delegated Regulation (EU) 2015/61, and shares or units in CIUs in accordance with point (e) to (h) 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, provided that they are encumbered less than one year,”

A new Art. 428ala is introduced to subject stable retail deposits to a 95% available stable funding ("ASF") factor to align with the treatment foreseen in the fully-fledged NSFR (cf line 3290):

"By way of derogation from Article 428aj, sight retail deposits having a residual maturity of less than one year that fulfil the criteria set out in Article 24 of Delegated Regulation (EU) 2015/61 shall be subject to a 95% available stable funding factor."

Line 3555 is modified to have only one category of required stable funding ("RSF") factor to be applied to all trade finance off-balance sheet exposures, regardless of their maturities. Line 3555 should also be modified to take out trade finance on balance sheet exposures, in order to achieve the "at least as or more conservative calibration":

"(b) Trade finance off-balance sheet related products as referred to in Article 111(1) of this Regulation."

Line 3542 should be modified to distinguish between claims on central banks with a residual maturity of less than six months (0% RSF factor) and those with a residual maturity between six months and 1 year which should receive a 50% RSF factor, in order to achieve the "at least as or more conservative calibration" (cf lines 3419 and 3420 in the fully fledged NSFR).

Line 3568 should be modified to include contributions to the default fund of Central Counterparty Clearing House ("CCPs") in the 85% RSF factor category, in order to achieve the "at least as or more conservative calibration" (cf line 3439 in the fully fledged NSFR):

"(a) any assets, including cash, posted as initial margin for derivatives contracts or posted as contribution to the default fund of a CCP, unless those would be assigned a higher required stable funding factor in accordance with Article 428aw if held unencumbered, in which case the higher required stable funding factor to be applied to the unencumbered asset shall apply;"

4. NSFR

Line 3343 (Art. 1 - para. 1 - point 114 Part VI - title IV - chapter 4 -section 2 - art. 428r (1) (fa) CRR would be kept (EP proposal to include Level 1 HQLA repos in 0% RSF category):

Insert Art. 428r (1)(fa) CRR:

"(fa) 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 of this Regulation applies;"

Art. 428s (b) CRR would be deleted (Council's version of 5% RSF provision on reverse repos) Line 3350:

Art. 428s (ba) CRR Line 3351 (Art. 1 - para. 1 - point 114 Part VI - title IV - chapter 4 -section 2 -) would be kept (EP's proposal to include other reverse repos than Level 1 (higher quality) HQLA in 5% RSF category)

Insert Art. 428s (ba) CRR:

"(ba) 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, other than those referred to in point (fa) of Article 428r. Those assets shall be taken into account on a net basis where Article 428e applies;"

Line 3365 (Art. 1 - para. 1 - point 114 Part VI - title IV - chapter 4 -section 2 - art. 428u - para. 1 - point a) would be deleted (as assets would be moved from 10% to new 5% category in line 3351).

The transitional period from Council's text for reverse repos (with some adaptations in wording to reflect the transitional RSF factors of 0% and 5% instead of 5% and 10% in the Council's text) is kept.

Insert Art. 510 (7) and (8) CRR:

"7. By [three years after the date of application of the net stable funding ratio as set out in Title IV of Part Six], the Commission shall, if appropriate and taking into account the report referred to in paragraph 6, any international standards developed by international fora and the diversity of the banking sector in the Union, submit a legislative proposal to the European Parliament and the Council on how to amend the treatment of secured lending transactions and capital market-driven transactions, including of the assets received or given in these transactions, and the treatment of unsecured transactions with a residual maturity of less than six months with financial customers for the calculation of the net stable funding ratio as set out in Title IV of Part Six if it deems it appropriate regarding the impact of the existing treatment on institutions' net stable funding ratio and to take better account of the funding risk linked to these transactions.

8. By [four 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 (fa) of Article 428r (1), in point (ba) of Article 428s(1) and in point (b) of Article 428u, shall be raised from 0% to 10%, from 5% to 15% and from 10% to 15% respectively, unless otherwise specified by the Commission in its legislative proposal, if appropriate, in accordance with paragraph 7."

Lines 3358 to 3361 will be introduced (Art. 1 - para. 1 - point 114 Part VI - title IV - chapter 4 - section 2 - art. 428ta - para. 1 - point a) as per EP:

Insert art. 428ta - para. 1 - point a): "(a) trade finance off-balance sheet related products as referred to in Article 111(1) with a residual maturity of minimum six months and less than one year."

Line 3368 (Art. 1 - para. 1 - point 114 Part VI - title IV - chapter 4 -section 2 - art. 428u - para. 1 - point d): move trade finance off-balance sheet related products with a residual maturity of one year or more from 15% RSF category (Council) to 10% (EP):

Insert art. 428u - para. 1 - point d): "(d) trade finance off-balance sheet related products as referred to in Article 111(1) with a residual maturity of one year or more."

Line 3377 (Art. 1 - para. 1 - point 114 Part VI - title IV - chapter 4 -section 2 - art. 428tw - para. 1 - point b) shall be deleted accordingly (Council's 15% RSF category for trade finance activities with a maturity longer than 12 months).

Lines 3065 to 3068 (Art. 411(15a) on definition of factoring) would be introduced as per EP:

Insert Art. 411(15a) CRR:

"(15a) 'factoring' means a contractual agreement between a business (assignor) and a financial entity (factor) in which the assignor assigns or sells its receivables to the factor in exchange of providing the assignor with one or more of the following services with regard to the receivables assigned:

(a) advance of a percentage of the amount of receivables assigned, generally short term, uncommitted and without automatic roll-over,

(b) receivables management, collection and credit protection whereby in general, the factor administers the assignor's sales ledger and collects the receivables in its own name.

For the purposes of Part VI, factoring shall be treated as trade finance."

Other asset classes (covered bonds and precious metals), Council's text will be kept, EP-proposals on covered bonds and precious metals are deleted; leading, inter alia, to the following modifications:

Insert Art. 411 (1)(6) CRR - Line 3052:

"(6) 'non-mandatory over-collateralisation' means any amount of assets which the institution is not obliged to attach to a covered bond issuance by virtue of legal or regulatory requirements, contractual commitments or for reasons of market discipline, including in particular where […]"

Insert Art. 428f (2) CRR - Line 3204:

"(c) covered bonds that meet all of the following conditions:

(i) they are referred to in Article 52(4) of Directive 2009/65/EC or they meet the eligibility requirements for the treatment set out in Article 129(4) or (5)**:**

(ii) the underlying loans are fully matched funded with the covered bonds issued or there exist 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;"

Insert Art. 428p (4)(c) CRR (line 3314):

"(c) assets attached as non-mandatory overcollateralisation to a covered bond issuance."

Delete Art. 428tw (1)(ba) (line 3378).

Delete Art. 428ac (1)(fa) and (fb) (lines 3424 and 3425).

Keep Council's text on the intra-group exposures: Insert Art. 428h (1) CRR - introd. Part (line 3215):

"1. By way of derogation from Chapters 3 and 4 of this Title, and where Article 428g does not apply, competent authorities may on a case-by-case basis authorise institutions to apply a higher available stable funding factor or a lower required stable funding factor to assets, liabilities and committed credit or liquidity facilities where all of the following conditions are fulfilled:"

Art 428h CRR (lines 3224 and 3225):

Insert Art. 1 - para. 1 - point 114 Part VI - title IV - chapter 2 - art. 428h - para 1 - point d -para. 1:
"(d) the institution and the counterparty are established in the same Member State;"

Art. 428h (1)(d) - (2) CRR shall be deleted.

EBA's role regarding interdependent assets and liabilities to be kept only on monitoring: consequently, delete EP's amendment in line 3194 (Art. 428f(1) chapeau) and keep line 3207 (Art. 428f(2a)):

Art. 428f(1) CRR introd. part:

"1. Subject to prior approval of competent authorities, an institution may consider that an asset and a liability are interdependent, provided that all of the following conditions are fulfilled:"

Insert Art. 428f(2a) CRR:

"2a. EBA monitors the assets and liabilities as well as products and services that are subject to treatment as interdependent assets and liabilities under paragraph 1 and 2, to determine whether and to what extent the suitability criteria are met. EBA instructs the Commission on the result of this monitoring and advises the Commission if they are of the opinion that an amendment to the conditions given in paragraph 1, or an amendment to the list of products and services in paragraph 2 is required."

Introduce the EBA report on holdings of securities to hedge derivatives contracts as requested by the EP: art. 510 (9) CRR (lines 4444-4448):

Insert Art. 510 (9):

"7a. EBA shall monitor the amount of stable funding required to cover the funding risk linked to institutions' holdings of securities to hedge derivative contracts. The EBA should report on the appropriateness of the 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:

the possible impact of the treatment on investors' ability to gain exposure to assets and the impact of the treatment on credit supply in the Capital Markets Union;

the opportunity to apply adjusted stable funding requirements to securities that are held to hedge derivatives which are funded by initial margin, either wholly or in part;

the opportunity to apply adjusted stable funding requirements to securities that are held to hedge derivatives which are funded by initial margin, either wholly or in part;

the opportunity to apply adjusted stable funding requirements to securities that are held to hedge derivatives which are not funded by initial margin.

10. By ... [two years after the date of application of the net stable funding ratio as set out in Title IV of Part Six or after an agreement of international standards that is developed by the Basel Committee], the Commission shall, if appropriate and taking take into account the report referred to in paragraph 9, any international standards developed by the Basel Committee, the diversity of the banking sector in the Union and the aims of the Capital Markets Union, submit a legislative proposal to the European Parliament and the Council on how to amend the treatment of institutions' holdings of securities to hedge derivative contracts for the calculation of the net stable funding ratio as set out in Title IV of Part Six if it deems it appropriate regarding the impact of the existing treatment on institutions' net stable funding ratio and to take better account of the funding risk linked to these transactions."

Introduce an additional Art. 428ag (3a) CRR with a mandate for EBA to assess whether it would be justified to reduce the RSF for (a) assets used for providing clearing and settlement services of precious metals such as gold, silver, platinum and palladium or (b) assets used for providing financing transactions of precious metals such as gold, silver, platinum and palladium of a term of 180 days or less:

Insert Art. 428ag (3a) CRR:

"3a. EBA shall assess whether it would be justified to reduce the required stable funding factor for (a) assets used for providing clearing and settlement services of precious metals such as gold, silver, platinum and palladium or (b) assets used for providing financing transactions of precious metals such as gold, silver, platinum and palladium of a term of 180 days or less. EBA shall submit its report to the Commission by 36 months after entry into force of this regulation."

5. Supporting factors – Capital Market Union

11.1 SME supporting factor

Recital 52 CRR (line 69)

"(52) Small and medium-sized enterprises (SMEs) are one of the pillars of the Union's economy as they play a fundamental role in creating economic growth and providing employment. Given the fact that SMEs carry a lower systematic risk than larger corporates, capital requirements for SME exposures should be lower than those for large corporates to ensure an optimal bank financing of SMEs. Currently, SME exposures of up to EUR 2.5 million are subject to a 23.81% reduction in risk weighted exposure amount. Given that the threshold of EUR 2.5 million for an SME exposure is not indicative of a change in riskiness of an SME, reduction in capital requirements should be extended to SME exposures beyond the threshold of EUR 2.5 million and for the exceeding part should amount to a 15% reduction of a risk-weighted exposure amount."

Article 501 CRR (lines 4297-4309):

"Article 501

Adjustment to risk-weighted non-defaulted SME exposures

1. Institutions shall adjust the risk-weighted exposure amounts for non-defaulted exposures to an SME (RWEA), which are calculated in accordance with Chapter 2 or Chapter 3 of Title II of part Three, as applicable, in accordance with the following formula:

$$\text{RWEA}^{*} = \text{RWEA}^{*} \frac{(\min(\text{E}^{*}; \text{EUR } 2\,500\,000) * 0.7619 + \max(\text{E}^{*} - \text{EUR } 2\,500\,000; 0) * 0.85)}{\text{E}^{*}}$$

where:

RWEA^{*} = the RWEA adjusted by an SME supporting factor;

E^{*} = the total amount owed to the institution, its subsidiaries, its parent undertakings and other subsidiaries of those parent undertakings, including any exposure in default, but excluding claims or contingent claims secured on residential property collateral, by the SME or the group of connected clients of the SME.

2. For the purpose of this Article:

(a) the exposure to an SME shall be included either in the retail or in the corporates or secured by mortgages on immovable property classes;

(b) an SME is defined in accordance with Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises[1]. Among the criteria listed in Article 2 of the Annex to that Recommendation only the annual turnover shall be taken into account;

(c) institutions shall take reasonable steps to correctly determine E^{*} and obtain the information required under point (b)."

[1] OJ L 124, 20.5.2003, p. 36.

11.2 Infrastructure Supporting Factor

Art 501a of the CRR (lines 4311-4359):

"Article 501a

Adjustment own funds requirements for credit risk for exposures to entities that operate or finance physical structures or facilities, systems and networks that provide or support essential public services

1. Own funds requirements for credit risk calculated in accordance with Title II, Part III shall be multiplied by a factor of 0.75 provided the exposure complies with all the following criteria:

(a) the exposure is included either in the corporate asset class or in the specialised lending exposures class, with the exclusion of exposures in default;

(b) the exposure is to an entity which was created specifically to finance or operate physical structures or facilities, systems and networks that provide or support essential public services;

(c) the source of repayment of the obligation is represented for not less than two thirds of its amount by the income generated by the assets being financed, rather than the independent capacity of a broader commercial enterprise, or by subsidies, grants or funding provided by one or more of the subjects listed in points (i) to (ii) of paragraph 2(b);

(d) the obligor can meet its financial obligations even under severely stressed conditions that are relevant for the risk of the project;

(e) the cash flows that the obligor generates are predictable and cover all future loan repayments during the duration of the loan;

(f) the re-financing risk of the exposure is low or adequately mitigated, taking into account any subsidies, grants or funding provided by one or more of the subjects listed in points (i) to (ii) of paragraph 2(b);

(g) the contractual arrangements provide lenders with a high degree of protection including the following:

(i) where the revenues of the obligor are not funded by payments from a large number of users, the contractual arrangements shall include provisions that effectively protect lenders against losses resulting from the termination of the project by the party which agrees to purchase the goods or services provided by the obligor;

(ii) the obligor has sufficient reserve funds fully funded in cash or other financial arrangements with highly rated guarantors to cover the contingency funding and working capital requirements over lifetime of the assets referred to in point b) of this paragraph;

(iii) the lenders have a substantial degree of control over the assets and the income generated by the obligor;

(iv) the lenders have the benefit of security to the extent permitted by applicable law in assets and contracts critical to the infrastructure business or have alternative mechanisms to secure their position;

(v) equity is pledged to lenders such that they are able to take control of the entity upon default;

(vi) the use of net operating cash flows after mandatory payments from the project for purposes other than servicing debt obligations is restricted;

(vii) there are contractual restrictions on the ability of the obligor to perform activities that may be detrimental to lenders, including the restriction that new debt cannot be issued without the consent of existing debt providers;

(h) the obligation is senior to all other claims other than statutory claims and claims from derivatives counterparties;

(i) where the obligor is in the construction phase the following criteria shall be fulfilled by the equity investor, or where there is more than one equity investor, the following criteria shall be fulfilled by a group of equity investors as a whole:

(i) the equity investors have a history of successfully overseeing infrastructure projects, the financial strength and the relevant expertise,

(ii) the equity investors have a low risk of default, or there is a low risk of material losses for the obligor as a result of the their default,

(iii) there are adequate mechanisms in place to align the interest of the equity investors with the interests of lenders;

(j) the obligor has adequate safeguards to ensure completion of the project according to the agreed specification, budget or completion date; including strong completion guarantees or a proven track record of substantial compensated damages;

(k) where operating risks are material, they are properly managed;

(l) the obligor uses tested technology and design;

(m) all necessary permits and authorizations have been obtained;

(n) the obligor uses derivatives only for risk-mitigation purposes;

(o) the obligor has carried out an assessment whether the assets being financed contribute to the following environmental objectives:

(i) climate change mitigation;

(ii) climate change adaptation;

(iii) sustainable use and protection of water and marine resources;

(iv) transition to a circular economy, waste prevention and recycling;

(v) pollution prevention and control;

(vi) protection of healthy ecosystems.

2. For the purposes of point (e) of paragraph 1, the cash flows generated shall not be considered predictable unless a substantial part of the revenues satisfies the following conditions:

(a) one of the following criteria is met:

(i) the revenues are availability-based;

(ii) the revenues are subject to a rate-of-return regulation;

(iii) the revenues are subject to a take-or-pay contract;

(iv) the level of output or the usage and the price shall independently meet one of the following criteria:

– it is regulated,

– it is contractually fixed,

– it is sufficiently predictable as a result of low demand risk;

(b) where the revenues of the obligor are not funded by payments from a large number of users, the party which agrees to purchase the goods or services provided by the obligor shall be one of the following:

(i) a central bank, a central government, a regional government or a local authority provided they are assigned a risk weight of 0% according to Articles 114 and 115 or are assigned an ECAI rating with a credit quality step of at least 3;

(ii) a PSE provided it is assigned a risk weight of 20% or below according to Article 116 or is assigned an ECAI rating with a credit quality step of at least 3;

(ii)bis a multilateral development bank referred to in Article 117(2);

(ii)ter an international organisation referred to in Article 118;

(iii) a corporate entity with an ECAI rating with a credit quality step of at least 3;

(iv) an entity that is replaceable without a significant change in the level and timing of revenues;

3. Institutions shall report to competent authorities every 6 months on the total amount of exposures to infrastructure project entities calculated in accordance with this Article.

4. The Commission shall, by [three years after the entry into force] report on the impact of the own funds requirements laid down in this Regulation on lending to infrastructure project entities and shall submit that report to the European Parliament and to the Council, together with a legislative proposal, if appropriate.

5. For the purpose of paragraph 4, EBA shall report on the following to the Commission:

(a) an analysis of the evolution of the trends and conditions in markets for infrastructure lending and project finance over the period referred to in paragraph 4;

(b) an analysis of the effective riskiness of the exposures referred to in paragraph 1 over a full economic cycle;

(c) the consistency of own funds requirements laid down in this Regulation with the outcomes of the analysis under points (a) and (b)."

6. Anti-Money Laundering-EBA-letter

Insertion of a new recital in CRD:

"(X) Combating money laundering and terrorist financing is essential for maintaining stability and integrity in the financial system. Uncovering involvement of an institution in money laundering and terrorist financing may have an impact on its viability and the stability of the financial system. Along the authorities and bodies responsible for compliance with the framework for anti-money laundering, the competent authorities in charge of authorisation and prudential supervision have an important role to play in identifying and disciplining weaknesses. Therefore, they should consistently factor money laundering and terrorist financing concerns into their relevant supervisory activities, including supervisory evaluation and review processes, assessments of the adequacy of institutions' governance arrangements, processes and mechanisms and assessments of the suitability of members of the management body of institutions, inform accordingly on any findings the relevant authorities and bodies in charge of compliance with anti-money laundering rules and take, as appropriate, supervisory measures in accordance with their powers under this Directive and Regulation (EU) 2013/575. This should be done on the basis of findings revealed in the authorisation, approval or review processes they are in charge with, as well as on the basis of information received from authorities and bodies in charge of compliance with Directive (EU) 2015/849."

Article 8 CRD:

"Article 8

Authorisation

[…]

2. EBA shall develop draft regulatory technical standards to specify:

(a) the information to be provided to the competent authorities in the application for the authorisation of credit institutions, including the programme of operations, structural organisation and governance arrangements provided for in Article 10.

(b) the requirements applicable to shareholders and members with qualifying holdings, or, where there are no qualifying holdings, of the 20 largest shareholders or members, pursuant to Article 14; and

[…]

5. EBA shall issue guidelines addressed to the competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010 to specify a common assessment methodology for granting authorisations in accordance with this Directive."

Article 10 CRD:

Article 10

Programme of operations, structural organization and governance arrangements

1. Member States shall require application for authorisation to be accompanied by a programme of operations setting out types of business envisaged and the structural organisation of the credit institution, including indication of the parent undertaking, financial holding companies and mixed financial holding companies within the group. Member States shall also require application for authorisation to be accompanied by a description of the arrangements, processes and mechanisms referred to in Article 74(1).

2. Competent authorities shall refuse authorisation to commence the activity of a credit institution unless they are satisfied that the arrangements, processes and mechanisms enable sound and effective risk management by the institution.

Article 56 CRD:

"Article 56

Exchange of information between authorities

Article 53(1) and Article 54 shall not preclude the exchange of information between competent authorities within a Member State, between competent authorities in different Member States or between competent authorities and the following, in the discharge of their supervisory functions:

[…]

(g) authorities responsible for supervising the obliged entities listed in points (1) and (2) of Article 2(1) of Directive (EU) 2015/849 of the European Parliament and of the Council (1) for compliance with that Directive and financial intelligence units;

(h) competent authorities or bodies responsible for the application of rules on structural separation within a banking group."

Article 91 CRD:

Article 91

Management body

1. 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. Members of the management body shall, in particular fulfil the requirements set out in paragraphs 2 to 8.

Where members of the management body of an institution do not fulfil the requirements set out in paragraph 1, competent authorities shall have the power to remove such members from the management body. The competent authorities shall in particular verify whether the requirements set out in paragraph 1 are still fulfilled where they have reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, or there is increased risk thereof in connection with that institution".

[…]

12. […]

(f) the consistent application of the power referred to in the second subparagraph of paragraph 1.

Article 97 CRD:

Article 97

Supervisory review and evaluation

[…]

"6. Where a review, in particular the evaluation of the governance arrangements, the business model, or the activities of an institution, gives competent authorities reasonable grounds to suspect that, in connection with that institution, money laundering or terrorist financing is being or has been committed or attempted, or there is increased risk thereof, the competent authority shall immediately notify the EBA and the authority or body that supervises the institution in accordance with Directive (EU) 2015/849 and is competent for ensuring compliance with that Directive. In case of potential increased risk of money laundering and terrorist financing the competent authority and the authority or body that supervises the institution in accordance with Directive (EU) 2015/849 and is competent for ensuring compliance with that Directive shall liaise and notify their common assessment immediately to the EBA. The competent authority shall take, as appropriate, measures in accordance with this Directive."

Article 117 CRD:

"Article 117 CRD

Cooperation obligations

[…]

4a. Competent authorities, financial intelligence units and authorities entrusted with the public duty of supervising obliged entities listed in points (1) and (2) of Article 2 (1) of Directive (EU) 2015/849 for compliance with that Directive, shall cooperate closely with each other within their respective competences and shall provide one another with information relevant for their respective tasks under this Directive, Regulation (EU) 575/2013 and under Directive (EU) 2015/849 provided that such cooperation and information exchange do not impinge on an on-going inquiry, investigation or proceeding in accordance with the criminal or administrative law of the Member State where the competent authority, financial intelligence unit or authority entrusted with the public duty of supervising obliged entities listed in points (1) and (2) of Article 2(1) of Directive (EU) 2015/849 is located.

EBA may assist the competent authorities in the event of a disagreement concerning the coordination of supervisory activities under this Article on its own initiative in accordance with the second subparagraph of Article 19(1) of Regulation (EU) No 1093/2010.

4b. EBA shall publish guidelines specifying the modalities of cooperation and information exchange between the authorities referred to in paragraph 4a, particularly in relation to cross-border groups and in the context of identifying serious breaches of anti-money laundering rules."

7. Own Funds

13.1 Revised Danish compromise

Article 471 (1) CRR (lines 4219 to 4224)

"1. By way of derogation from Article 49(1), during the period from 31 December 2018 to 31 December 2024, institutions may choose not to deduct equity holdings in insurance undertakings, reinsurance undertakings and insurance holding companies where the following conditions are met:

(b) the conditions laid down in points (a) and (e) of Article 49(1);
(c) the competent authorities are satisfied with the level of risk control and financial analysis procedures specifically adopted by the institution in order to supervise the investment in the undertaking or holding company;
(d) the equity holdings of the institution in the insurance undertaking, reinsurance undertaking or insurance holding company do not exceed 15 % of the Common Equity Tier 1 instruments issued by that insurance entity as at 31 December 2012 and during the period from 1 January 2013 to 31 December 2022;
(e) the amount of the equity holding which is not deducted does not exceed the amount held in the Common Equity Tier 1 instruments in the insurance undertaking, reinsurance undertaking or insurance holding company as at 31 December 2012."

13.2 P&L transfer agreements

Article 28(3) CRR - lines 364-365: insert the following subparagraphs:

"The conditions laid down in point (h) (v) of paragraph 1 shall be deemed to be met notwithstanding a subsidiary is subject to a profit and loss transfer agreement with its parent undertaking, according to which the subsidiary is obliged to transfer, following the preparation of its annual financial statements, its annual result to the parent undertaking, where all of the following conditions are fulfilled:

(i) the parent undertaking owns 90% of the voting rights and capital of the subsidiary;
(ii) the parent undertaking and the subsidiary are located in the same Member State;
(iii) the agreement has been set up for legitimate taxation purposes;
(iv) in preparing the annual financial statement the subsidiary has discretion to decrease the amount of distributions by allocating a part or all of its profits to its own reserves or funds for general banking risk before making any payment to its parent undertaking;
(v) the parent undertaking is obliged under the agreement to fully compensate the subsidiary for all losses of the subsidiary;

(vi) the agreement is subject to a notice period according to which the agreement can be terminated only by the end of an accounting year with effect not earlier than the beginning of the following accounting year, leaving the parent undertaking's obligation to fully compensate the subsidiary for all losses incurred during the current accounting year unchanged.

Where an institution has entered in a profit and loss transfer agreement, it shall notify the competent authority without undue delay and provide the competent authority with a copy of this agreement. The institution shall also notify the competent authority without undue delay of any changes to the agreement and the termination of the profit and loss transfer agreement. An institution shall not enter into more than one profit and loss transfer agreement."

13.3 MVC

Insert a new recital in CRR:

"(x) For an institution that provides a minimum value commitment to the ultimate benefit of retail clients for an investment in a unit or share in a CIU including as part of a government-sponsored private pension schemes, no payment by the institution or undertaking included in the same scope of prudential consolidation is required unless the value of the customer's shares or units in the CIU falls below the guaranteed amount at one or more points in time specified in the contract. The likelihood of the commitment being exercised is therefore low in practice. Where an institution's minimum value commitment is limited to a percentage of the amount that a client had originally invested into shares or units in a CIU (fixed-amount minimum value commitment) or to an amount that depends on the performance of financial indicators or market index up to a given time, any currently positive difference between the value of the customer's shares or units and the present value of the guaranteed amount at a given date constitutes a buffer and reduces the risk for the institution to have to pay out the guaranteed amount. All these reasons justify a reduced credit conversion factor."

Article 36(1)(m-new) CRR

"(m) for a minimum value commitment referred to in Article 132c(2), any amount by which the current market value of the units or shares in CIUs underlying the minimum value commitment falls short to the present value of the minimum value commitment and for which the institution has not already recognised a reduction of Common Equity Tier 1 items."

Article 132c (2-new) and (3-new) CRR

"**Treatment of off-balance sheet exposures to CIUs**

[…]

(2) Institutions shall calculate the exposure value of a minimum value commitment that meets the conditions set out paragraph 3 of this Article as the discounted present value of the guaranteed amount using a default risk-free discount factor. Institutions may reduce the exposure value of the minimum value commitment by the amount deducted according to Article 36(1)(m) and any losses recognised with respect to the minimum value commitment under the applicable accounting standard.

Institutions shall calculate the risk-weighted exposure amount for off-balance sheet exposures arising from minimum value commitments that meet all the conditions set out paragraph 3 of this Article by multiplying the exposure value of those exposures by a credit conversion factor of no less than 20% and the applicable risk weight pursuant to Article 132 or Article 152.

(3) Institutions shall determine the risk weighted exposure amount for off-balance sheet exposures arising from minimum value commitments in accordance with paragraph 2 where all of the following conditions are met:

(a) the off-balance sheet exposure of the institution is a minimum value commitment for an investment into units or shares of one or more CIUs under which the institution is only obliged to pay out under the minimum value commitment where the market value of the underlying exposures of the CIU or CIUs is below a predetermined threshold at one or more points in time, as specified in the contract;
(b) the CIU is any of the following
    (i) a UCIT as defined in Directive 2009/65/EC or
    (ii) an AIF as defined in Article 4(1)(a) of Directive 2011/61/EU which solely invests in transferable securities or in other liquid financial assets referred to in Directive 2009/65/EC, where the mandate of the AIF does not allow a leverage higher than that allowed under Article 51(3) of Directive 2009/65/EC;
(c) the current market value of the underlying exposures of the CIU underlying the minimum value commitment without considering the effect of the off-balance sheet minimum value commitments covers or exceeds the present value of the threshold specified in the minimum value commitment;
(d) when the excess of the market value of the underlying exposures of the CIU or CIUs over the present value of the minimum value commitment declines, the institution, or another undertaking in so far as it is covered by the supervision on a consolidated basis to which the institution itself is subject in accordance with this Regulation and Directive 2013/36/EU or Directive 2002/87/EC, can influence the composition of the underlying exposures of the CIU or CIUs or limit the potential for a further reduction of the excess in other ways; and
(e) the ultimate direct or indirect beneficiary of the minimum value commitment is a retail client as defined in point 11 of Article 4(1) of Directive 2014/65/EU.

Article 158 CRR (new paragraph 9a)

"(9a) The expected loss amount for a minimum value commitment that meets all of the requirements set out in Article 132c(3) shall be zero."

Article 400(1)(la-new) CRR

"exposures arising from a minimum value commitment that meets all of the conditions set out in Article 132c(3)."

13.4 ADI

Art 4 (128) CRR:

> "'distributable items' means the amount of the profits at the end of the last financial year plus any profits brought forward and reserves available for that purpose before distributions to holders of own funds instruments less any losses brought forward, profits which are non-distributable pursuant to provisions in legislation or the institution's bye-laws and sums placed to non-distributable reserves in accordance with national law or the statutes of the institution, in each case with respect to the specific category of own funds instruments, to which provisions, by-laws, national law or statutes relate; those profits, losses and reserves being determined on the basis of the individual accounts of the institution and not on the basis of the consolidated accounts."

13.5 Treatment of Software

Article 36 CRR - lines 371-378:

"Point (b) of paragraph 1 is replaced by the following:

> "(b) intangible assets with the exception of prudently valued software assets whose value is not negatively affected by the resolution, insolvency or liquidation of the institution."

A new paragraph 4 is introduced as follows:

> "EBA shall develop draft regulatory technical standards to specify the application of the deductions referred to in point (b) of paragraph 1 of this Article, including the materiality of negative effects on the value which do not cause prudential concerns.
>
> EBA shall submit those draft regulatory technical standards to the Commission by [12 months 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."

Amending Regulation to CRR Article 3 and 4CT line 4575a (new)

Point (ac) is inserted in paragraph 2:

> "(ac) the provision on the exemption from deductions of prudently valued software assets whose value is not negatively affected by the resolution, insolvency or liquidation of the institution in point (372), which shall apply from [12 months after entry into force of the regulatory technical standards referred to in Article 36(4)]."

The following recital 128a is added:

> "Due to the evolution of the banking sector in an even more digital environment software is becoming a more important asset type. Prudently valued software assets whose value is not materially affected by the resolution, insolvency or liquidation of an institution should not be subject to the deduction of intangible assets from Common Equity Tier 1 items. This specification is important as software is a broad concept that covers many different types of assets not all of which preserve their value in a gone concern situation. In this context, differences in the valuation and amortisation of software assets as well as realised sales of such assets should be taken into account. Furthermore, consideration should be given to international developments and differences in the regulatory treatment of investments in software, different prudential rules that apply to institutions and insurance undertakings as well as the diversity of the financial sector in the Union including non-regulated entities such as financial technology companies."

8. Pillar 2/Macro

I. Macroprudential Framework

I.1 Pecking Order (lines 4179 to 4211 CRR)

Article 458 CRR

Macroprudential or systemic risk identified at the level of a Member State

[..]

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 that cannot be addressed by means of other macroprudential tools set out in this Regulation and Directive 2013/36/EU as effectively as by implementing stricter national measures, it shall notify the Commission and the ESRB accordingly. The ESRB shall forward the notification to the European Parliament, the Council, and EBA without delay.

The notification shall be accompanied by the following documents and include, where appropriate,

relevant quantitative or qualitative evidence on:

(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 or to the real economy;

(c) an explanation as to why the authority considers that the macroprudential tools set out in this Regulation and Directive 2013/36/EU would be less suitable and effective to deal with those risks than the draft national measures referred to in (d). For these purposes, macroprudential tools shall mean Articles 124 and 164 of this Regulation and Articles 133 and 136 of Directive 2013/36/EU.

(d) the draft national measures for domestically authorised institutions, or a subset of those institutions, intended to mitigate the changes in the intensity of risks and concerning:

(i) the level of own funds laid down in Article 92;

(ii) the requirements for large exposures laid 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) the liquidity requirements laid down in Part Six;

(vi) risk weights for targeting asset bubbles in the residential property and commercial immovable 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 the information which is available to the Member State concerned.

[…]

4. The power to adopt an implementing act to reject the draft national measures referred to in point (d) of paragraph 2 is conferred on the Council, acting by qualified majority, on a proposal from the Commission.

Within one month of receiving the notification referred to in paragraph 2, the ESRB and EBA shall provide their opinions on the points mentioned in that paragraph to the Council, the Commission and the Member State concerned.

Taking the utmost account of the opinions referred to in the second subparagraph and if there is robust, strong and detailed evidence that the measure will have a negative impact on the internal market that outweighs the financial stability benefits resulting in a reduction of the macroprudential or systemic risk identified, the Commission may, within one month, propose to the Council an implementing act to reject the draft national measures.

In the absence of a Commission proposal within that period of one month, the Member State concerned may immediately adopt the draft national measures for a period of up to two years or until the macroprudential or systemic risk ceases to exist if that occurs sooner.

The Council shall decide on the proposal by the Commission within one month after receipt of the proposal and state its reasons for rejecting or not rejecting the draft national measures.

The Council shall only reject the draft national measures if it considers that one or more of the following conditions are not complied with:

(a) the changes in the intensity of macroprudential or systemic risk are of such nature as to pose risk to financial stability at national level;

(b) suitable or effective than the draft national measures to deal with the macroprudential or systemic risk identified;

(c) the draft national measures do not entail disproportionate adverse effects on the whole or parts of the financial system in other Member States or in the Union as a whole, thus forming or creating an obstacle to the functioning of the internal market; and

(d) the issue concerns only one Member State.

The assessment of the Council shall take into account the opinion of the ESRB and EBA and shall be based on the evidence presented in accordance with paragraph 2 by the authority determined in accordance with paragraph 1.

In the absence of a Council implementing act to reject the draft national measures within one month after receipt of the proposal by the Commission, the Member State may adopt the measures and apply them for a period of up to two years or until the macroprudential or systemic risk ceases to exist if that occurs sooner.

5. Other Member States may recognise the measures set in accordance with this Article and apply them to domestically authorised institutions, which have branches or have exposures located in the Member State authorised to apply the measure.

[…]

9. Before the expiry of the authorisation issued in accordance with paragraph 4, the Member State shall, in consultation with the ESRB and EBA, review the situation and may adopt, in accordance with the procedure referred to in paragraph 4, a new decision for the extension of the period of application of national measures for up to two additional years each time. After the first extension, the Commission shall in consultation with the ESRB and EBA review the situation at least every two years thereafter.

I.2 Recital 13a CRD (Macroprudential) (line 28)

(13a) This Directive should not preclude Member States from implementing measures in national law designed to enhance the resilience of the financial system such as, but not limited to, loan-to-value limits, debt-to-income limits, debt-service-to-income limits and other instruments addressing lending standards.

I.3 Systemic Risk Buffer (SRB): operation of the buffer, subsets of exposures and sectors, steps of adjustment and prohibition of overlaps (lines 583a and 614g CRD):

Keep compromise text as per the 4CT of 2 November, subject to the following amendments

- *in paragraph 9 (changes against Council's text):*

9. A systemic risk buffer shall apply to all exposures, or a subset of exposures as referred to in paragraph 8, of all institutions, or one or more subsets of those institutions, for which the authorities of the Member State concerned are competent in accordance with this Directive and shall be set in steps of adjustment of 0.5 percentage points or multiples thereof. Different requirements may be introduced for different subsets of institutions and of exposures. The systemic risk buffer shall not address risks that are covered by the framework as set out in Article 131.

- *in paragraph 10(c) (changes against Council's text):*

(c) the systemic risk buffer shall not be used to address risks that are covered in Articles 130 and 131

- *in paragraph 11(g), keep Council's amendment (line 601b):*

(g) where the systemic risk buffer rate applies to all exposures, a justification of why the authority considers that the systemic risk buffer is not duplicating the functioning of the O-SII buffer provided in Article 131 of this Directive.

I.4 Articles 124, 125 and 164 CRR:

- *Art. 124: keep Council's text in full as in lines 1101 to 1129 (CRR):*

"*Article 124*

Exposures secured by mortgages on immovable property

1. An exposure or any part of an exposure fully secured by mortgage on immovable property shall be assigned a risk weight of 100 %, where the conditions under Article 125 or 126 are not met, except for any part of the exposure which is assigned to another exposure class. The part of the exposure that exceeds the mortgage value of the property shall be assigned the risk weight applicable to the unsecured exposures of the counterparty involved.

The part of an exposure treated as fully secured by immovable property shall not be higher than the pledged amount of the market value or in those Member States that have laid down rigorous criteria for the assessment of the mortgage lending value in statutory or regulatory provisions, the mortgage lending value of the property in question.

1a. Member States shall designate an authority responsible for the application of paragraphs 2, 3 and 4 of this Article. This authority shall be either the competent authority or the designated authority.

Where the authority designated by the Member State for the application of this Article is the competent authority, the competent authority shall ensure that the relevant national bodies and authorities which have a macro-prudential mandate are duly informed of the competent authority's intention to make use of this Article, and are appropriately involved in the assessment of financial stability concerns in its Member State as per paragraph 3 of this Article.

Where the authority designated by the Member State for the application of this Article is different from the competent authority, the Member States shall adopt the necessary provisions to ensure proper coordination and exchange of information between designated and competent authorities for the proper application of this Article. In particular, authorities are required to cooperate closely and share all the information that may be necessary for the adequate performance of the duties imposed upon the designated authority pursuant to this Article. This cooperation shall aim at avoiding any form of duplicative or inconsistent actions between competent and designated authorities, as well as ensuring that the interaction with other measures, in particular under Article 458 of this Regulation and Article 133 of Directive 2013/36/EU, is duly taken into account.

2. Based on the data collected under Article 101 and on any other relevant indicators, the authority determined in accordance with paragraph 1a shall periodically, and at least annually, assess whether the risk-weight of 35 % for exposures to one or more property segments secured by mortgages on residential property referred to in Article 125 located in one or more parts of its territory and the risk weight of 50 % for exposures secured on commercial immovable property referred to in Article 126 located in one or more parts of its territory are appropriately based on:

(a) the loss experience of exposures secured by immovable property;

(b) forward-looking immovable property markets developments.

3. Where, based on the assessment referred to in paragraph 2 of this Article, the authority determined in accordance with paragraph 1a concludes that the risk weights set out in Article 125(2) or Article 126(2) do not adequately reflect the actual risks related to one or more property segments of exposures fully secured by mortgages on residential or commercial immovable property located in one or more parts of the Member State of the relevant authority, and if it considers that the inadequacy of the risk weights could adversely affect current or future financial stability in its Member State, it may increase the risk weights applicable to those exposures within the ranges determined in paragraph 4 or impose stricter criteria than those set out in Article 125(2) or Article 126(2).

The authority determined in accordance with paragraph 1a shall notify the EBA and the ESRB of any adjustments to risk weights and criteria applied pursuant to this paragraph. Within one month of receiving the afore-mentioned notification, the ESRB and the EBA shall provide their opinion to the Member State concerned. EBA and the ESRB shall publish the risk weights and criteria for exposures referred to in Articles 125, 126 and 199(1)(a) as implemented by the relevant authority.

4. For the purposes of paragraph 3 the authority determined in accordance with paragraph 1a may set the risk weights within the following ranges:

(a) 35 % to 150% for exposures secured by mortgages on residential immovable property;

(b) 50 % to 150 % for exposures secured by mortgages on commercial immovable property.

4a. Where the authority determined in accordance with paragraph 1a sets higher risk weights or stricter criteria pursuant to paragraph 3, institutions shall have a 6-month transitional period to apply them.

4b. EBA, in close cooperation with the ESRB, shall develop draft regulatory technical standards to specify the rigorous criteria for the assessment of the mortgage lending value referred to in paragraph 1 and the types of factors to be considered for the assessment of the appropriateness of the risk weights referred in paragraph 2.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2019 .

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.

4c. The ESRB may give by way of recommendations in accordance with Article 16 of Regulation (EU) No 1092/2010, and in close cooperation with the EBA, guidance to authorities designated in accordance to paragraph 1a of this Article on the following:

(a) which factors could "adversely affect current or future financial stability" referred to in paragraph 3 of this Article;

(b) indicative benchmarks that the authority determined in accordance with paragraph 1a shall take into account when determining higher risk-weights.

5. The institutions of one Member State shall apply the risk weights and criteria that have been determined by the authorities of another Member State in accordance with paragraph 3 to all their corresponding exposures secured by mortgages on commercial and residential immovable property located in one or more parts of that Member State."

- *Art. 125: drop EP's amendments as in lines 1130 to 1144 (CRR)**;***

- *Art.164: keep Council's text in full as in lines 1244 to 1291 (CRR*):

"Article 164

Loss Given Default (LGD)

1 Institutions shall provide own estimates of LGDs subject to the requirements specified in Section 6 and permission of the competent authorities granted in accordance with Article 143. For dilution risk of purchased receivables, an LGD value of 75 % shall be used. If an institution can decompose its EL estimates for dilution risk of purchased receivables into PDs and LGDs in a reliable manner, the institution may use its own LGD estimate.

2. Unfunded credit protection may be recognised as eligible by adjusting PD or LGD estimates subject to requirements as specified in Article 183(1), (2) and (3) and permission of the competent authorities either in support of an individual exposure or a pool of exposures. An institution shall not assign guaranteed exposures an adjusted PD or LGD such that the adjusted risk weight would be lower than that of a comparable, direct exposure to the guarantor.

3. For the purposes of Article 154(2), the LGD of a comparable direct exposure to the protection provider referred to in Article 153(3) shall either be the LGD associated with an unhedged facility to the guarantor or the unhedged facility of the obligor, depending upon whether, in the event both the guarantor and obligor default during the life of the hedged transaction, available evidence and the structure of the guarantee indicate that the amount recovered would depend on the financial condition of the guarantor or obligor, respectively.

4. The exposure weighted average LGD for all retail exposures secured by residential property and not benefiting from guarantees from central governments shall not be lower than 10 %.

The exposure weighted average LGD for all retail exposures secured by commercial immovable property and not benefiting from guarantees from central governments shall not be lower than 15 %.

4a. Member States shall designate an authority responsible for the application of paragraph 5 of this Article. This authority shall be either the competent authority or the designated authority.

Where the authority designated by the Member State for the application of this Article is the competent authority, the competent authority shall ensure that the relevant national bodies and authorities which have a macro-prudential mandate are duly informed of the competent authority's intention to make use of this Article, and are appropriately involved in the assessment of financial stability concerns in its Member State as per paragraph 5 of this Article.

Where the authority designated by the Member State for the application of this Article is different from the competent authority, the Member States shall adopt the necessary provisions to ensure proper coordination and exchange of information between designated and competent authorities for the proper application of this Article. In particular, authorities are required to cooperate closely and share all the information that may be necessary for the adequate performance of the duties imposed upon the designated authority pursuant to this Article. This cooperation shall aim at avoiding any form of duplicative or inconsistent actions between competent and designated authorities, as well as ensuring that the interaction with other measures, in particular under Article 458 of this Regulation and Article 133 of Directive 2013/36/EU, is duly taken into account.

5. Based on the data collected under Article 101 and on any other relevant indicators, and taking into account forward-looking immovable property market developments the authority determined in accordance with paragraph 4a shall periodically, and at least annually, assess whether the minimum LGD values referred to in paragraph 4 of this Article, are appropriate for exposures secured by mortgages on residential or commercial immovable property located in one or more parts of its territory.

Where, based on the assessment referred to the first subparagraph of this paragraph, the authority determined in accordance with paragraph 4a concludes that the minimum LGD values referred to in paragraph 4 of this Article are not adequate, and if it considers that the inadequacy of LGD values could adversely affect current or future financial stability in its Member State, it may set higher minimum LGD values for those exposures located in one or more parts of its territory. These higher minimum values may also be applied at the level of one or more property segments of such exposures.

The authority determined in accordance with paragraph 4a shall notify the EBA and the ESRB before making the decision referred to in this paragraph. Within one month of receiving the afore-mentioned notification the ESRB and the EBA shall provide their opinion to the Member State concerned. EBA and ESRB shall publish these LGD values.

5a. Where the authority determined in accordance with paragraph 4a sets higher minimum LGD values pursuant to paragraph 5, institutions shall have a 6-month transitional period to apply them.

6a. EBA, in close cooperation with the ESRB, shall develop draft regulatory technical standards to specify the conditions that the authority determined in accordance with paragraph 4a shall take into account when assessing the appropriateness of LGD values as part of the assessment referred to in paragraph 5.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2019 .

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.

6b. The ESRB may give by way of recommendations in accordance with Article 16 of Regulation (EU) No 1092/2010, and in close cooperation with the EBA, guidance to authorities designated in accordance to paragraph 4a of this Article on the following:

(a) what factors could " adversely affect current or future financial stability" referred to in paragraph 5; and

(b) indicative benchmarks that the authority determined in accordance with paragraph 4a shall take into account when determining higher minimum LGD values.

7. The institutions of one Member State shall apply the higher minimum LGD values that have been determined by the authorities of another Member State in accordance with paragraph 5 to all their corresponding exposures secured by mortgages on commercial and residential immovable property located in one or more parts of that Member State."

I.5 O-SII determination:

Drop EP's amendments and keep Council's text for Art. 131(3), subpar. 2 of the CRD (lines 554 to 556), subject to the following amendment:

EBA, after consulting the ESRB, shall publish guidelines by 1 January 2015 on the criteria to determine the conditions of application of this paragraph in relation to the assessment of O- SIIs. Those guidelines shall take into account international frameworks for domestic systemically important institutions and Union and national specificities.

After having consulted the ESRB, EBA shall report to the Commission by 31 December 2020 on the appropriate methodology for the design and calibration of O-SII buffer rates.

I.6 Additivity of macroprudential buffers and overall buffer cap:

Keep Council's text for Art. 131(15 of the CRD (lines 582a and 582b):

"15. Where an institution is subject to a systemic risk buffer, set in accordance with Article 133, this shall be cumulative with the O-SII or G-SII buffer that is applied in accordance with this Article.

Where the sum of the systemic risk buffer rate as calculated for the purposes of paragraphs 12, 13 or 14 of Article 133 of this Directive and the O-SII or G-SII buffer rate to which the same institution is subject to would be higher than 5%, the procedure set out in paragraph 5a shall apply."

I.7 Macropru Review:

Keep the proposed Compromise Text for Article 513 CRR (Lines 4456-4467) as in the 4CT of 2 November, subject to technical modifications as appropriate:

"1. By 30 June 2022, and every five 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 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.

(d) whether other types of instruments, such as borrower-based instruments, should be added to the macroprudential tools in this Regulation and Directive 2013/36/EU to complement capital-based instruments and to allow for a harmonised use of the instruments in the internal market. The assessment should take into account whether harmonised definitions of these instruments and the reporting of respective data at EU level are a prerequisite for the introduction of such instruments.

(e) whether the leverage ratio buffer requirement [as introduced in Article 92(1a)], should be extended to systemically important insitutions other than G-SIIs, whether its calibration should be different from the calibration for G-SIIs, and whether its calibration should depend on the level of systemic importance of the institution.

(g) whether the current voluntary reciprocity of macroprudential measures should be turned into mandatory reciprocity and whether the current ESRB framework for voluntary reciprocity is an appropriate basis for that.

(g) how relevant EU and national macroprudential authorities can be mandated with tools to address new emerging systemic risks arising from credit institutions exposures to the non-bank sector, in particular from derivatives and securities financing transactions (SFT) markets, the asset management sector and the insurance sector.

2. By 31 December 2022, and every five 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.".

II. Pillar 2

II.1 Additional own funds requirements (Lines 21 and 394 CRD) (track changes against Council's text)

Art. 104a (1) Subparagraph 2 CRD

The competent authorities shall only impose the additional own funds requirements referred to in Article 104(1)(a) to cover the risks incurred by individual institutions due to their activities, including those reflecting the impact of certain economic and market developments on the risk profile of an individual institution.

Recital 9

(9) Additional own funds requirements imposed by competent authorities should be set in relation to the specific situation of an institution and should be duly justified. Additional own funds requirements can be imposed to address risks or elements of risk explicitly excluded or not explicitly covered by the own funds requirements in Regulation (EU) No 575/2013 only to the extent that this is considered necessary in light of the specific situation of an institution. These requirements should be positioned in the stacking order of own funds requirements, above the minimum own funds requirements and below the combined buffer requirement. The institution-specific nature of additional own funds requirements should prevent its use as a tool to address macro-prudential or systemic risks. However this should not preclude the competent authorities from addressing, including by means of additional own funds requirements, the risks incurred by individual institutions due to their activities, including those reflecting the impact of certain economic and market developments on the risk profile of an individual institution.

II.2 Additional Reporting Requirements (lines 379 to 383 CRD) (track changes against Council's text)

Art. 104 CRD

2. For the purposes of paragraph 1(j), competent authorities may only impose additional or more frequent reporting requirements on institutions where the relevant requirement is appropriate and proportionate with regard to the purpose for which the information is required and the information requested is not duplicative.

For the purposes of Articles 97 to 102, any additional information that may be required from institutions shall be deemed as duplicative where the same or substantially the same information has already been otherwise reported to the competent authority or may be produced by the competent authority.

The competent authority shall not require an institution to report additional information where it has previously received it in a different format or level of granularity and that different format or granularity does not prevent the competent authority from producing information of the same quality and reliability as that produced on the basis of the additional information that would be otherwise reported.

II.3 Additional Disclosure Requirements (line 378 CRD):

Keep Council's text in full for point (l) of Article 104(1)

(21) Article 104 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. For the purposes of Article 97, Article 98(4) and (5), Article 101(4) and Article 102 and the application of Regulation (EU) No 575/2013, competent authorities shall have at least the following powers:

[…]

(l) to require additional disclosures

II.4 Proportionality in Pillar 2:

Add new text in paragraph 4 of Art. 97 of the CRD to replace wording in line 351:

(aa) the following subparagraph is inserted after the first subparagraph of paragraph 4:

"When conducting the review and evaluation referred to in this Article, competent authorities shall apply the principle of proportionality in accordance with the criteria disclosed pursuant to point (c) of Article 143(1)."

(33b) In Article 143(1), point (c) is amended as follows:

(c) the general criteria and methodologies they use in the review and evaluation referred to in Article 97, including the criteria for applying the principle of proportionality as referred to in Article 97(4);

II.5 P2G and Market Abuse Regulation (MAR)

Article 2a (Amendments to Regulation (EU) 596/2014) is deleted.

Recital 69b of the CRR (line 93):

"Recital 69b

(69b) Given that the guidance on additional own funds set out in Article 104b(3) of Directive 2013/36/EU is a capital target that reflects supervisory expectations, it should be subject neither to mandatory disclosure nor to prohibition of disclosure on request of competent authorities under Regulation 575/2013 or Directive 2013/36/EU. Similarly, it should not be subject to mandatory disclosure under Article 17 of the Regulation (EU) 596/2014, provided that its confidentiality can be ensured."

II.6 Pillar 2 Guidance:

Article 104b (lines 417 to 427 CRD)

Article 104b

Guidance on additional own funds

1. Pursuant to the strategies and processes referred to in Article 73 and after consulting the competent authority,73, institutions shall establish set their internal capital at 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 sufficient to cover all the risks that an institution is exposed to and to ensure that:

(a) cyclical economic fluctuations do not lead to a 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), the potential losses resulting from stress scenarios, including those identified pursuant to under the supervisory stress test referred to in Article 100.

2. Competent authorities shall regularly review the level of own funds internal capital set by each institution in accordance with paragraph 1 taking into account the outcome as part of the reviews and evaluations carried out in accordance with Articles 97 and 101, including the results of stress tests referred to in Article 100.

Pursuant to these reviews competent authorities shall determine for each institution the overall level of own funds they consider appropriate.

3. Competent authorities shall communicate to institutions the outcome of the review provided for in paragraph 2. Where appropriate, their supervisory guidance on additional own funds, which shall consist of the difference between the overall level of own funds considered appropriate by the competent authorities may communicate to institutions any expectation for adjustments to the level of own funds established in accordance with paragraph 1.and the amount of own funds required in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013 and pursuant to Articles 104(1)(a) and 128 of this Directive, where this difference is positive.

4. Competent authorities shall not communicate to institutions any expectation for the adjustments to the level of ' guidance on additional own funds pursuant to paragraph 3 in cases where shall be institution-specific. The guidance may cover risks addressed by additional own funds requirement shall be requirements imposed pursuant to Article 104a only to the extent that it covers aspects of those risks that are not already covered under that requirement.

5. An institution that fails to meet the expectations set out in paragraph 3 shall not be subject to failure to meet the guidance referred to in paragraph 3 where an institution meets the requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/201, the additional own funds requirement referred to in Article 104(1)(a) and the combined buffer requirement referred to in Article 128(6) shall not trigger the restrictions referred to in Article 141.

II.7 Joint decisions on Pillar 2 Guidance:

Keep Council's text in full as per line 462, drop EP's amendment in line 463 (CRD)

"Article 113

Joint decisions on institution-specific prudential requirements

[…];

(c) on any expectation for adjustments to the consolidated level of supervisory guidance on additional own funds determined in accordance with Article 104b(3).

9. FRTB-Market Risk

EU currencies that have been strictly fixed to EUR

Article 325aw(4) (line 2507

4. Where the daily exchange-rate data for the preceding three years show that a currency pair composed of EUR and a non-EUR currency of a Member State is constant and that the institution always can face a zero bid/ask spread on the respective trades related to this currency pair, the institution may, upon explicit permission by its competent authority, apply the risk weight referred to in paragraph 1 divided by 2.

Qualitative assumptions for institutions using the derogation for small trading book business

Article 94(3a) (line 855)

3a. Where both conditions set out in Article 94(1) of this Regulation are met, irrespective of the obligations set out in Articles 74 and 83 of Directive 2013/36/EU, the provisions of Articles 102(3), 102(4), 103 and 104b of this Regulation do not apply.

Article 103(3) (line 982g)

(deleted)

FRTB lines that are related to reporting requirements (Council text)

Recitals 32 - 34 (lines 46-49)

(32) The Basel Committee, therefore, initiated the Fundamental review of the trading book (FRTB) to address those weaknesses. This work led to the publication in January 2016 of a revised market risk framework. In December 2017 the Group of Central Bank Governors and Heads of Supervision agreed to extend the implementation date of the revised market risk framework in order to allow institutions additional time to develop the necessary systems infrastructure but also for the Basel Committee to address certain specific issues related to the framework. This includes a review of the calibrations of the standardised and internal model approaches to ensure consistency with the Committee's original expectations. Upon finalisation of this review and before an impact assessment is performed to assess the impacts of the resulting revisions to the FRTB framework on institutions in the Union, all institutions that would be subject to the FRTB framework in the Union should start reporting the calculation derived from the revised standardised approach. To this end, the Commission should be empowered to adopt a delegated act by [31 December 2019] in order to fully operationalise the calculation of these reporting requirements in line with international developments. Institutions should start reporting this calculation no later than one year after the adoption of that delegated act. In addition, institutions that obtain approval to use the revised internal model approach of the FRTB framework for reporting purposes should also report the calculation under the internal model approach [3 years] after its full operationalisation.

(33) Introducing reporting requirements of the FRTB approaches should be considered as a first step towards full implementation of the FRTB framework in the Union. Taking into account the final revisions to the FRTB framework performed by the Basel Committee, the results of the impacts of these revisions on institutions in the Union and the FRTB approaches already set forth in this Regulation for reporting requirements, the Commission should submit, where appropriate, a legislative proposal to the European Parliament and the Council by 30 June 2020 on how the FRTB framework should be implemented in the Union to set the own funds requirements for market risk.

(34) A proportionate treatment for market risks should also apply to institutions with limited trading book activities, allowing more institutions with small trading activities to apply the credit risk framework for banking book positions as set out under a revised version of the derogation for small trading book business. The principle of proportionality should also be taken into account when the Commission re-assesses how institutions with medium-sized trading books should calculate the own funds requirements for market risk. In particular, the calibration of the own funds requirements for market risks for those institutions with medium-sized trading books should be reviewed in light of developments at international level. In the meantime, those institutions, as well institutions with small trading activities, should be exempted from the reporting requirements under the FRTB.

Recital 56a new (line 75)

(delete)

Article 101a [Council version] (lines 939-951)

(45bis) Article 101a is introduced:

Article 101a
Specific reporting requirements for market risks

"1. From the date of application of the delegated act referred to in Article 461a, an institution that do not meet either the conditions set out in Article 94(1) or the conditions set out in Article 325a(1) shall report, for all its trading book positions and all its non-trading book positions subject to foreign exchange or commodity risks, the results of the calculation based on using the alternative standardised approach set out in Part Three, Title IV, Chapter 1a on the same basis as the institution reports the obligations laid down in points (b)(i) and (c) Article 92(3).
2. For the purposes of the reporting requirement in paragraph 1, an institution shall report separately the calculations set out in points (a), (b) and (c) of Article 325d for the portfolio of all trading book positions or non-trading book positions generating foreign-exchange and commodity risks.
3. In addition to the requirement set out in paragraph 1, from the end of a 3 years period following the date of entry into force of the latest regulatory technical standards referred to in Articles 325be(7), 325bf(3), 325bg(9), 325bh(4), an institution may report, for those positions assigned to trading desks for which the institution has been granted a permission by competent authorities to use that approach as set out in Article 325ba, the results of the calculation based on using the alternative internal model approach set out in Part Three, Title IV, Chapter 1b on the same basis as the institution report the obligations laid down in points (b)(i) and (c) Article 92(3).

4. For the purposes of the reporting requirement in paragraph 3, an institution shall report separately the calculations set out in points (a)(i), (a)(ii), (b)(i), (b)(ii) of Article 325bb(1) and for the portfolio of all trading book positions or non-trading book positions generating foreign-exchange and commodity risks trading desks for which the institution has been granted a permission by competent authorities to use that approach as set out in Article 325ba.
5. For the purposes of the reporting requirements set out in this Article, an institution may use in combination the approaches set out in paragraphs 1 and 2 on a permanent basis within a group provided that the calculation under the approach set out in paragraph 1 does not exceed 90% of the total calculation. Otherwise, the institution shall use the approach set out in paragraph 1 for all its trading book positions and all its non-trading book positions generating foreign exchange or commodity risks.
6. EBA shall develop draft implementing technical standards, to specify the uniform reporting templates, the instructions and methodology on how to use the templates, the frequency and dates of reporting, the definitions and the IT solutions for the reporting referred to in this Article.
EBA shall submit those draft implementing technical standards to the Commission by [30 June 2020].
Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.
The implementing technical standards shall provide for a transitional period of no less than six months from the date of entry into force and the date of application of any new reporting requirements"

Article 102(4) (line 956)

4. For the purpose of the reporting requirements set out in Article 101a(3), trading book positions shall be attributed to trading desks established in accordance with Article 104b".

Headline of Article 103 (lines 962-963)

"Article 103
Management of the trading book

Article 104 (lines 983-1021)

(deleted)

Intro of Article 104a (line 1022)

(49) The following Article 104a is inserted:

Article 104a(2) (line 1028)

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 non-trading book 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.

Article 104a(5) (line 1034)

5. The re-classification of a position in accordance with this article shall be irrevocable."

Intro and headline of Article 104b (lines 1035 and 1036)

(49bis) The following Article 104b is inserted:

"Article 104b
Requirements for trading desk

Article 104b(1) (line1038)

1. For the purposes of the reporting requirement set out in Article 101a(3), institutions shall establish trading desks and attribute each of their trading book positions to one of these trading desks. Trading book positions shall be attributed to the same trading desk only where they satisfy the agreed business strategy for the trading desk and are consistently managed and monitored in accordance with paragraph 2.

Article 104b(4) (lines1048-1050)

(deleted)

Articles 106(5) to (7) (lines 1072-1075)

5. Where an institution hedges non-trading book interest rate risk exposures using an interest rate risk position booked in its trading book, this position shall be considered to be an internal hedge for the purposes of assessing the interest rate risks arising from non-trading positions in accordance with Articles 84 and 98 of Directive 2013/36/EU where the following conditions are met:
(a1) the position has been attributed to a separate portfolio from the other trading book position, the business strategy of which is solely dedicated to manage and mitigate the market risk of internal hedges of interest rate risk exposure. For that purpose, the institution may attribute to this portfolio other interest rate risk positions entered into with third parties, or its own trading book as long as the institution perfectly offset the market risk of those interest rate risk positions entered into with its own trading book by entering into opposite interest rate risk positions with third parties;
(a) for the purpose of the reporting requirement set out in Article 101a(3), the position has been attributed to a trading desk established in accordance with Article 104b the business strategy of which is solely dedicated to manage and mitigate the market risk of internal hedges of interest rate risk exposure. For that purpose, that trading desk may enter into other interest rate risk positions with third parties or other trading desks of the institution, as long as those other trading desks perfectly offset the market risk of those other interest rate risk positions by entering into opposite interest rate risk positions with third parties;
(b) the institution has fully documented how the position mitigates the interest rate risks arising from non-trading book positions for the purposes of the requirements laid down in Articles 84 and 98 of Directive 2013/36/EU;

6. The own funds requirements for market risks of all the positions assigned to the separate portfolio referred to in point (a1) of paragraph 5 shall be calculated on a standalone basis and shall be additional to the own funds requirements for the other trading book positions
7. For the purposes of the reporting requirements set out in Article 101a, the calculation of the own funds requirements for market risks of all the positions assigned to the separate portfolio referred to in point (a1) of paragraph 5 or to the trading desk or entered into by the trading desk referred to in point (a) of paragraph 5, where appropriate, shall be calculated on a standalone basis as a separate portfolio and shall be additional to the calculation of own funds requirements for the other trading book positions.".

Article 325 (lines 1883-1901)

Article 325
Approaches for calculating the own funds requirements for market risks

1. An institution shall calculate the own funds requirements for market risks of all trading book positions and non-trading book positions subject to foreign exchange risk or commodity risk in accordance with the following approaches:
(a) [__]
(b) [__]
(c) the standardised approach referred to in paragraph 2;
(d) the internal model approach set out in Chapter 5 of this Title for those risk categories for which the institution has been granted the permission in accordance with Article 363 to use that approach.
2. The own funds requirements for markets risks calculated in accordance with the standardised approach referred to in point (c) of paragraph 1 shall mean the sum of the following own funds requirements, as applicable:
(a) the own funds requirements for position risks referred to in Chapter 2 of this Title;
(b) the own funds requirements for foreign exchange risks referred to in Chapter 3 of this Title;
(c) the own funds requirements for commodity risks referred to in Chapter 4 of this Title;
3. An institution that is not exempted from the reporting requirements set out in Article 101a in accordance with Article 325a shall report the calculation in accordance with Article 101a for all trading book positions and non-trading book positions subject to foreign exchange risk or commodity risk in accordance with the following approaches:
(a) the alternative standardised approach set out in Chapter 1a;
(b) the alternative internal model approach set out in Chapter 1b;
4. An institution may use in combination the approaches set out in points (c) and (d) of paragraph 1 on a permanent basis within a group in accordance with Article 363.
5. [__]
6. Institutions shall not use the approach set out in point (b) of paragraph 3 for instruments in the trading book that are securitisation positions or positions included in the CTP as defined in paragraphs 7 to 7b .
7. Securitisation positions and n-th-to-default credit derivatives that meet all of the following criteria shall be assigned to the CTP:
(a) the positions are neither re-securitisation positions, nor options on a securitisation tranche, nor any other derivatives of securitisation exposures that do not provide a pro-rata share in the proceeds of a securitisation tranche;
(b) all their underlying instruments are:
(i) single-name instruments, including single-name credit derivatives, for which a liquid two-way market exists;
(ii) commonly-traded indices based on the instruments referred to in point (i).

A two-way market is considered to exist where there are independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a relatively short time conforming to trade custom.
7a. Positions with any of the following underlying instruments shall not be included in the CTP:
(a) underlying instruments that belong to the exposure classes referred to in points (h) or (i) of Article 112;
(b) a claim on a special purpose entity, collateralised, directly or indirectly, by a position that, according to paragraph 6, would itself not be eligible for inclusion in the CTP.
7b. Institutions may include in the CTP positions that are neither securitisation positions nor n-th-to-default credit derivatives but that hedge other positions of that portfolio, provided that a liquid two-way market as described in the last subparagraph of paragraph 6 exists for the instrument or its underlying instruments.
8. EBA shall develop draft 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.
EBA shall submit those draft regulatory technical standards to the Commission by [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.

Headline of Article 325a and the first subparagraph of Article 325a(1) (lines 1903-1904)

Article 325a
Exemptions from specific reporting requirements for market risks

1. An institution shall be exempted from the reporting requirement set out in Article 101a provided that the size of the institution's on- and off-balance sheet business subject to market risks is equal to or less than each of the following thresholds on the basis of an assessment carried out on a monthly basis using the data as of the last day of the month:

The first subparagraph of Article 325a(5) (lines 1917-1918)

5. The exemption from the reporting requirements laid down in Article 101a shall cease to apply within three months of one of the following cases:

Article 325a(6) to (8) (lines 1921 and 1923)

6. Where an institution has become subject to the reporting requirements laid down in Article 101a in accordance with paragraph 5, it shall only be permitted to be exempt from those reporting requirements where it demonstrates to the competent authority that all the conditions set out in paragraph 1 have been met for an uninterrupted full year period.
7. Institutions shall not enter into, buy or sell a position for the only purpose of complying with any of the conditions set out in paragraph 1 during the monthly assessment.
8. An institution that is eligible for the treatment set out in Article 94 shall be exempted from the reporting requirement set out in Article 101a.

Article 325c (lines 1934-1944)

(deleted)

headline of Chapter 1a (line 1946)

"Chapter 1a
The alternative standardised approach

Headline and first subparagraph of Article 325d (lines 1948-1949)

Article 325d
Scope and structure of the alternative standardised approach

An institution shall calculate the own funds requirements for market risk with the alternative standardised approach for the purposes of Article 101a(1) for a portfolio of trading book positions or non-trading book positions generating foreign-exchange and commodity risks as the sum of the following three components:

Article 325h (lines1986-2024)

Article 325h
Own funds requirements for curvature risk

(residual of Article 325h deleted)

Article 325i(2)(c) (line 2031)

(c) the 'low correlations' scenario shall be specified in accordance with the delegated act referred to in Article 461a.

Article 325j (lines 2035-2038)

Article 325j
Treatment of index instruments and multi-underlying options

1. The treatment of index instruments and multi-underlying options shall be specified in accordance with the delegated act referred to in Article 461a.
2. [__].

Article 325k(3) (lines 2051-2052)

3. EBA shall develop draft regulatory technical standards to specify in more detail which risk weights shall be assigned to positions in the CIU referred to in point (b) of paragraph 1
EBA shall submit those draft regulatory technical standards to the Commission by [two years after the entry into force of this Regulation].

Last two subparagraphs of Article 325v(5) (lines 2238-2239)

EBA shall submit those draft regulatory technical standards to the Commission by [two 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.

Article 325x(8) (lines 2286-2288)

8. EBA shall develop draft regulatory technical standards to specify in more detail:
(a) how institutions shall calculate JTD amounts for different types of instruments in accordance with this Article, including the determination of notional values;
(b) which alternative methodologies institutions shall use for the purpose of the estimation of Gross JTD amounts referred to in paragraph 7.
EBA shall submit those draft regulatory technical standards to the Commission by [two 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.

Article 325af(1) to (2) and Table 3 (lines 2373-2379)

1. For currencies not included in the most liquid currency subcategory as referred to in point (b) of Article 325be(5), the risk weights of the sensitivities to the risk-free rate risk factors for each bucket in Table 3 shall be specified in accordance with the delegated act referred to in Article 461a.

Table 3

Bucket	Maturity
1	0.25 year
2	0.5 year
3	1 year
4	2 year
5	3 year
6	5 year
7	10 year
8	15 year
9	20 year
10	30 year

2. A common risk weight both for all the sensitivities to inflation and cross currency basis risk factors specified in accordance with the delegated act referred to in Article 461a.

Article 325al and Table 6 (lines 2422-2426)

Article 325al
Risk weights for credit spread risk securitisations (CTP)

Risk weights for the sensitivities to credit spread securitisations (CTP) risk factors shall be the same for all maturities (0,5 year, 1 year, 3 years, 5 years, 10 years) within each bucket and shall be specified for each bucket in Table 6 in accordance with the delegated act referred to in Article 461a.

Table 6

Bucket number	Credit quality	Sector
1	All	Central government, including central banks, of Member States of the Union
2	Credit quality step 1 to 3	Central government, including central banks, of a third country, multilateral development banks and international organisations referred to in Article 117(2) and 118
3		Regional or local authority and public sector entities
4		Financial sector entities including credit institutions incorporated or established by a central government, a regional government or a local authority and promotional lenders
5		Basic materials, energy, industrials, agriculture, manufacturing, mining and quarrying
6		Consumer goods and services, transportation and storage, administrative and support service activities
7		Technology, telecommunications
8		Health care, utilities, professional and technical activities
9		Covered bonds issued by credit institutions established in Member States of the Union
10		Covered bonds issued by credit institutions in third countries
11	Credit quality step 4 to 6	Central government, including central banks, of a third country, multilateral development banks and international organisations referred to in Article 117(2) and 118
12		Regional or local authority and public sector entities
13		Financial sector entities including credit institutions incorporated or established by a central government, a regional government or a local authority and promotional lenders
14		Basic materials, energy, industrials, agriculture, manufacturing, mining and quarrying
15		Consumer goods and services, transportation and storage, administrative and support service activities
16		Technology, telecommunications
17		Health care, utilities, professional and technical activities
18	Other sector	

Article 325an(1) and Table 7 (lines 2433-2435)

1. Risk weights for the sensitivities to credit spread securitisation (non-CTP) risk factors shall be the same for all the maturities (0,5 year, 1 year, 3 years, 5 years, 10 years) within each bucket in Table 7 and shall be specified for each bucket in Table 7 in accordance with the delegated act referred to in Article 461a.

Table 7

Bucket number	Credit quality	Sector
1	Senior & Credit quality step 1 to 3	RMBS - Prime
2		RMBS - Mid-Prime
3		RMBS - Sub-Prime
4		CMBS
5		ABS - Student loans
6		ABS - Credit cards
7		ABS - Auto
8		CLO non-CTP
9	Non-senior & Credit quality step 1 to 3	RMBS - Prime
10		RMBS - Mid-Prime
11		RMBS - Sub-Prime
12		CMBS
13		ABS - Student loans
14		ABS - Credit cards
15		ABS - Auto
16		CLO non-CTP
17	Credit quality step 4 to 6	RMBS - Prime
18		RMBS - Mid-Prime
19		RMBS - Sub-Prime
20		CMBS
21		ABS - Student loans
22		ABS - Credit cards
23		ABS - Auto
24		CLO non-CTP
25	Other sector	

Article 325aq(1) and Table 8 (lines 2452-2454)

1. Risk weights for the sensitivities to equity and equity repo rates risk factors shall be specified for each bucket in Table 8 in accordance with the delegated act referred to in Article 461a.:

Table 8

Bucket number	Market capitalisation	Economy	Sector
1	Large	Emerging market economy	Consumer goods and services, transportation and storage, administrative and support service activities, healthcare, utilities
2			Telecommunications, industrials
3			Basic materials, energy, agriculture, manufacturing, mining and quarrying
4			Financials including government-backed financials, real estate activities, technology
5		Advanced economy	Consumer goods and services, transportation and storage, administrative and support service activities, healthcare, utilities
6			Telecommunications, industrials
7			Basic materials, energy, agriculture, manufacturing, mining and quarrying
8			Financials including government-backed financials, real estate activities, technology
9	Small	Emerging market economy	All sectors described under bucket numbers 1, 2, 3 and 4
10		Advanced economy	All sectors described under bucket numbers 5, 6, 7 and 8
11	Other sector		

Article 325aq(3) (lines 2456-2558)

3. EBA shall develop draft regulatory technical standards to specify what constitutes emerging market and advanced economies for the purpose of this Article.
EBA shall submit those draft regulatory technical standards to the Commission by [two 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 Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 325at and Table 9 (lines2476-2480)

Article 325at
Risk weights for commodity risk

Risk weights for the sensitivities to commodity risk factors shall be specified for each bucket in Table 9 in accordance with the delegated act referred to in Article 461a.

Table 9

Bucket number	Bucket name
1	Energy - Solid combustibles
2	Energy - Liquid combustibles
3	Energy - Electricity and carbon trading
4	Freight
5	Metals – non-precious
6	Gaseous combustibles
7	Precious metals (including gold)
8	Grains & oilseed
9	Livestock & dairy
10	Softs and other agriculturals
11	Other commodity

Article 325aw(1) (line 2503)

1. Risk weight for all sensitivities to foreign exchange risk factors shall be specified in accordance with the delegated act referred to in Article 461a.

headline of Chapter 1b (lines 2542-2543)

Chapter 1b
The alternative internal model approach

Article 325ba(1) to (3) (lines 2548-2558)

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 accordance with Article 325bb for the purposes of Article 101a(3) for the portfolio of all positions attributed to trading desks that fulfil the all 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 ;
(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;
(e) No securitisation or resecuritisation positions have been assigned to the trading desks.

2. Institutions shall report to the competent authorities in accordance with Article 101a(3)
3. An institution that has been granted the permission referred to in paragraph 1 shall immediately notify its competent authorities that one of its trading desks no longer meets at least one of the requirements set out in paragraph 1. That institution shall no longer be permitted to apply this Chapter for the purposes of the reporting requirement of Article 101a to any of the positions attributed to that trading desk and shall calculate the own funds requirements for market risks in accordance with the approach set out Chapter 1a for all the positions attributed to that trading desk for the purposes of the reporting requirement of Article 101a(3) at the earliest reporting date and until the institution demonstrates to the competent authorities that the trading desk again fulfils all the requirements set out in paragraph 1.

Article 325ba(5) to(8) (lines 2560-2570)

5. For positions attributed to trading desks for which an institution has not been granted the permission referred to in paragraph 1, the own funds requirements for market risk shall be calculated by that institution for the purposes of the reporting requirements of Article 101a(3) in accordance with Chapter 1a of this Title. For the purpose of that calculation, all those positions shall be considered on a standalone basis as a separate portfolio.
6. For a given trading desk, the unconstrained expected shortfall measure referred to in point (a) of paragraph 2 shall mean the unconstrained expected shortfall measure calculated in accordance with Article 325bc for all the positions assigned to that trading desk considered on a standalone basis as a separate portfolio. By way of derogation from Article 325bd, institutions shall fulfil the following requirements when calculating that unconstrained expected shortfall measure for each trading desk:
(a) the stress period used in the calculation of the partial expected shortfall number PESt$_{RS}$ for a given trading desk shall be the stress period identified in accordance with point (c) of Article 325bd(1) for the purpose of determining PESt$_{RS}$ for all the trading desks for which institutions have been granted the permission referred to in paragraph 1;
(b) when calculating the partial expected shortfall numbers PESt$_{RS}$ and PESt$_{RC}$ for a given trading desk, the scenarios of future shocks shall only be applied to the modellable risk factors of positions assigned to the trading desk which are included in the subset of modellable risk factors chosen by the institution in accordance with point (a) of Article 325bd(2) for the purpose of determining PESt$_{RS}$ for all the trading desks for which institutions have been granted the permission referred to in paragraph 1.
7. Material changes to the use of internal models that an institution has received permission to use, the extension of the use of internal models that the institution has received permission to use and material changes to the institution's choice of the subset of modellable risk factors referred to in Article 325bd(2) shall require a separate permission by its competent authorities.
Institutions shall notify the competent authorities of all other extensions and changes to the use of the internal models for which the institution has received permission to use.
8. 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 and changes to the subset of modellable risk factors referred to in Article 325bd;
(b) the assessment methodology under which competent authorities verify an institution's compliance with the requirements set out in Article 325bi to 325bj and Articles 325bo to 325 bq.
EBA shall submit those draft regulatory technical standards to the Commission by [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 Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 325be(7) (lines 2655-2661)

7. EBA shall develop draft regulatory technical standards to specify in greater detail:
(a) how institutions shall map risk factors of positions referred to in paragraph 1 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 [nine 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 325bg(9) (lines 2717-2719)

9. EBA shall develop draft regulatory technical standards to further specify the technical elements that shall be included in the actual and hypothetical changes the portfolio's value of an institution for the purpose of this Article.
EBA shall submit those draft regulatory technical standards to the Commission by [nine 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 325bh (lines 2720-2729)

Article 325bh
Profit and loss attribution requirement

1. An institution's trading desk meets the profit and loss (P&L) attribution requirements for the purpose of Article 325ba(1) where that trading desk complies with the requirements set out in this Article.
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.
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 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 consequences for an institution where the theoretical changes in a trading desk portfolio's value is not sufficiently close to the hypothetical changes in the trading desk portfolio's value for the purposes of paragraph 2;
(c) the frequency at which the P&L attribution has to be performed by an institution;

(d) 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 [nine 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 325bl(4) (lines 2787-2792)

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.
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 Articles 10 to 14 of Regulation (EU) No 1093/2010.

Different headlines (lines 2846-2853)

(deleted)

Article 445 (lines 3968-3973)

Article 445
Disclosure of exposure to market risk

The institutions calculating their own funds requirements in accordance with points (b) and (c) of Article 92(3) shall disclose those requirements separately for each risk referred to in those provisions. In addition, own funds requirements for specific interest rate risk of securitisation positions shall be disclosed separately.

Article 455 (lines 4148-4174)

Article 455
Use of Internal Market Risk Models

Institutions calculating their capital requirements in accordance with Article 363 shall disclose the following information:
(a) for each sub-portfolio covered:
(i) the characteristics of the models used;
(ii) where applicable, for the internal models for incremental default and migration risk and for correlation trading, the methodologies used and the risks measured through the use of an internal model including a description of the approach used by the institution to determine liquidity horizons, the methodologies used to achieve a capital assessment that is consistent with the required soundness standard and the approaches used in the validation of the model; (iii) a description of stress testing applied to the sub-portfolio
(iv) a description of the approaches used for back-testing and validating the accuracy and consistency of the internal models and modelling processes;
(b) the scope of permission by the competent authority;
(c) a description of the extent and methodologies for compliance with the requirements set out in Articles 104 and 105;
(d) the highest, the lowest and the mean of the following:
(i) the daily value-at-risk measures over the reporting period and as per the period end;
(ii) the stressed value-at-risk measures over the reporting period and as per the period end;
(iii) the risk numbers for incremental default and migration risk and for the specific risk of the correlation trading portfolio over the reporting period and as per the period-end;
(e) the elements of the own funds requirement as specified in Article 364;
(f) the weighted average liquidity horizon for each subportfolio covered by the internal models for incremental default and migration risk and for correlation trading;
(g) a comparison of the daily end-of-day value-at-risk measures to the one-day changes of the portfolio's value by the end of the subsequent business day together with an analysis of any important overshooting during the reporting period.

Article 461a (lines 4236-4240)

(118a) The following new Article 461a is inserted:

Article 461a
Alternative standardised approach for market risks

For the purposes of the reporting requirements set out in paragraph 1 of Article 101a, the Commission shall be empowered to adopt delegated acts in accordance with Article 462, to make technical adjustments to Articles 325h, 325i, 325j, 325af, 325al, 325an, 325aq, 325at, 325aw and 325ay of the alternative standardised approach set out in Part Three, Title IV, Chapter 1a taking into account of developments in international regulatory standards.
The Commission shall adopt the delegated act referred to in paragraph 1 by 31 December 2019".

Article 501b (lines 4360-4400)

(deleted)

Article 519a (lines 4495-4513)

(131) The following Article 519a is inserted:

"Article 519a
Own funds requirements for market risks

1. By 30 September 2019, EBA shall report on the impact, on institutions in the Union, of international standards to calculate own funds requirement for market risks.
2. By 30 June 2020, the Commission shall, taking into account the results of the report referred to in paragraph 1, the international standards and the approaches set out in Part Three, Title IV, Chapters 1a and 1b, submit a report together with a legislative proposal, where appropriate, to the European Parliament and the Council on how to implement international standards on adequate own funds requirements for market risks."

Article 3(2)(c) and (ca) of the amending regulation (lines 4577-4578)

"(c) the provisions on the introduction of the new own funds requirements for market risk in points (49), (51) and (59) which shall apply from [four years after date of entry into force] of this Regulation;
(ca) the provisions on the reporting requirements for market risks in points (45bis), (49bis), (83) to (84) and (118a) which shall apply from the date of entry into force of this Regulation."

10. IPU

Art 21b CRD [Lines 157-194]

"Article 21b

Intermediate EU parent undertaking

1. Two or more institutions in the Union, which are part of the same third country group, shall have a single intermediate EU parent undertaking that is established in the Union.

1a. Competent authorities may allow the institutions referred to in paragraph 1 to have two intermediate EU parent undertakings where the competent authorities ascertain that the establishment of a single intermediate EU parent undertaking would:

(a) be incompatible with a mandatory requirement for separation of activities imposed by the rules or supervisory authorities of the third country where the ultimate parent undertaking of the third country has its head office; or

(b) render resolvability less efficient than in the case of two intermediate EU parent undertakings according to an assessment carried out by the competent resolution authority of the intermediate EU parent undertaking.

2. An intermediate EU parent undertaking shall be a credit institution authorized in accordance with Article 8, or a financial holding company or mixed financial holding company approved in accordance with Article 21a.

By way of derogation from the first subparagraph, where none of the institutions referred to in paragraph 1 is a credit institution or the second intermediate EU parent undertaking must be set up in connection with investment activities to comply with a mandatory requirement as referred to in paragraph 1a, the intermediate EU parent company or the second intermediate EU parent company, respectively, may be an investment firm authorized in accordance with Article 5(1) of Directive 2014/65/EU that is subject to Directive 2014/59/EU.

3. Paragraphs 1, 1a and 2 shall not apply where the total value of assets in the Union of the third country group is lower than EUR 40 billion.

4. For the purposes of this Article, the total value of assets in the Union of the third country group shall be the sum of the following:

(a) the amount of total assets of each institution in the Union of the third country group, as resulting from their consolidated balance sheet or as resulting from their individual balance sheet, where an institution's balance sheet is not consolidated; and

(b) the amount of total assets of each branch of the third country group authorized in the Union in accordance with this Directive, Directive 2014/65/EU or Regulation (EU) No 600/2014.

5. Competent authorities shall notify to the EBA the following information in respect of each third country group operating in their jurisdiction:

(a) the names and amount of total assets of supervised institutions belonging to a third country group;

(b) the names and amount of total assets corresponding to third country branches authorized in that Member State in accordance with this Directive, Directive 2014/65/EU or Regulation (EU) No 600/2014, and the types of activities that they are authorized to carry out;

(c) the name and legal form of any intermediate EU parent undertaking set-up in that Member State and the name of the third country group of which it is part.

6. The EBA shall publish on its website the list of all third country groups operating in the Union and their intermediate EU parent undertaking or undertakings, where applicable.

Competent authorities shall ensure that each institution under their jurisdiction that is part of a third country group meets one of the following conditions:

(a) it has an intermediate EU parent undertaking;

(b) it is an intermediate EU parent undertaking;

(c) it is the only institution in the Union of the third country group; or

(d) it is part of a third country group whose total value of assets in the Union is below EUR 40 billion.

6a. By way of derogation from paragraph 1, third country groups operating through more than one institution in the Union and with total value of assets equal to or exceeding EUR 40 billion on [date of entry into force of this directive] shall have an intermediate EU parent undertaking or, in the case referred to in paragraph 1a, two intermediate EU parent undertakings by [date of application of Directive + 3 years].

6b. By [date of application of Directive + six years] the EBA shall, taking into account the information referred to in paragraph 5, review the requirements imposed on institutions by this Article and submit a report to the European Parliament and the Council. This report shall, at least, consider:

(a) whether the requirements of this Article are operable, necessary and proportionate an whether other measures would be more appropriate;

(b) whether the requirements imposed on institutions by this Article should be revised to reflect best international practices.

6c. Within two years of the date of entry into force of this Directive, EBA shall submit a report to the European Parliament, the Council and the Commission on the treatment of third-country branches under the relevant national law of Member States. This report shall consider at least:

(a) whether and to what extent supervisory practices under national law for third-country branches differ between Member States;

(b) whether a different treatment of third-country branches could result in regulatory arbitrage;

(c) whether further harmonization of national regimes for third-country branches would be necessary and appropriate, especially with regards to significant third-country branches.

The Commission shall, if appropriate, submit a legislative proposal to the European Parliament and the council based on the recommendations made by EBA."

11. Scope of CRR/CRD

Recital 17 (line 32) - delete as per the Council's text

Articles 2(5) and 2(6) CRD (lines 49 to 91)

Article 2 is amended as follows:

(a) paragraph 5 is amended as follows:

(1) point (4) is deleted

(1a) point (6) is replaced by the following:

(11) "(6) in Germany, the 'Kreditanstalt für Wiederaufbau', 'Landwirtschaftliche Rentenbank', 'Bremer Aufbau-Bank GmbH', 'Hamburgische Investitions- und Förderbank', 'Investitionsbank Berlin', 'Investitionsbank des Landes Brandenburg', 'Investitionsbank Schleswig-Holstein', 'Investitions- und Förderbank Niedersachsen – NBank', 'Investitions- und Strukturbank Rheinland-Pfalz', ' Landeskreditbank Baden-Württemberg – Förderbank', 'LfA Förderbank Bayern', 'NRW.BANK', 'Saarländische Investitionskreditbank AG', 'Sächsische Aufbaubank – Förderbank', 'Thüringer Aufbaubank', undertakings which are recognised under the 'Wohnungsgemeinnützigkeitsgesetz' as bodies of State housing policy and are not mainly engaged in banking transactions, and undertakings recognised under that law as non-profit housing undertakings;";

(1b) point (14) is replaced by the following:

"(14) in Lithuania, the 'kredito unijos' other than the 'centrinės kredito unijos';"

(1c) point (16) is replaced by the following:

"(16) in the Netherlands, the 'Nederlandse Investeringsbank voor Ontwikkelingslanden NV', the 'NV Noordelijke Ontwikkelingsmaatschappij', the 'NV Industriebank Limburgs Instituut voor Ontwikkeling en Financiering', the 'Overijsselse Ontwikkelingsmaatschappij Oost NV' and kredietunies;";

(2) the following point (24) is added:

"(24) in Croatia, the "kreditne unije" and the "Hrvatska banka za obnovu i razvitak",';

(3) the following point (25) is added:

"(25) in Malta, "The Malta Development Bank";

(4) the following point (26) is added:

"(26) in Ireland, "the Strategic Banking Corporation of Ireland";"

(b) [__]

(c) paragraph 6 is replaced by the following:

"6. The entities referred to in point (1) and points (3) to (24) of paragraph 5 of this Article shall be treated as financial institutions for the purposes of Article 34 and Title VII, Chapter 3."

Article 9(3) CRD (lines 111 to 117):

> "3. Member States shall notify to the Commission and the EBA the national laws that expressly allow undertakings other than credit institutions to carry out the business of taking deposits and other repayable funds from the public.
> 4. Pursuant to this Article Member States may not exempt credit institutions from this Directive and Regulation (EU) No 575/2013."

Article 145, points (j) and (k) of the CRD (lines 684 to 690) - delete as per the Council's text.

12. Leverage Ratio

18.1 Capital quality, building societies

"Article 429 CRR

Calculation of the leverage ratio

[…]
3. For the purposes of paragraph 2, the capital measure shall be the Tier 1 capital.
[…]
7. By way of derogation from point (b) of Article 429(4a), institutions may reduce the exposure value of a pre-financing or an intermediate loan by the positive balance on the savings account of the debtor to which the loan was granted and only include the resulting amount in the total exposure measure, provided all of the following conditions are met:

(a) the granting of the loan is conditional upon the opening of the savings account at the institution granting the loan and both the loan and the savings account are regulated by the same sectoral law;
(b) the balance on the savings account cannot be withdrawn, in part or in full, by the debtor for the entire duration of the loan;
(c) the institution can unconditionally and irrevocably use the balance on the savings account to settle any claim originating under the loan agreement in cases regulated by the sectoral law referred to in point (a), including the case of non-payment by or the insolvency of the debtor.

8. For the purposes of point (a) of paragraph 7, 'pre-financing or intermediate loan' means a loan that is granted to the borrower for a limited period of time in order to bridge the borrower's financing gaps until the final loan is granted in accordance with the criteria laid down in the sectoral law regulating these transactions."

18.2 Institutional protection schemes (IPS)

"Article 429a CRR

Exposures excluded from the exposure measure

1. […]
c. exposures that are assigned a risk weight of 0% in accordance with Article 113 (6) or (7);"

18.3 Window dressing

"Article 99 CRR

Reporting on prudential requirements and financial information

[…]
1a. In addition to the reporting on the leverage ratio referred to in point (a) of paragraph 1, to enable the competent authorities to monitor leverage ratio volatility, in particular around reporting reference dates, large institutions shall report specific components of the leverage ratio to their competent authorities based on averages over the reporting period and the data used to calculate those averages.
5. […] For the purpose of paragraph 1a, the implementing technical standards shall specify which components of the leverage ratio shall be reported using day-end or month-end values. For this purpose, the EBA shall take into account both of the following:

(a) how susceptible a component is to significant temporary reductions in transaction volumes that could result in an underrepresentation of the risk of excessive leverage at the reporting reference date;
(b) developments and findings at international level."

"Article 104 CRD

1. […]

(j) to impose additional or more frequent reporting requirements, including reporting on capital, liquidity and leverage;"

18.4 Central bank exemption

(new recital) In exceptional circumstances that warrant the exclusion of certain exposures to central banks from the Leverage Ratio and in order to facilitate the implementation of monetary policies competent authorities should be able to exclude such exposures from the leverage ratio exposure measure on a temporary basis. For this purpose, they should publicly declare, after consultation with the relevant central bank, that such exceptional circumstances exist. The leverage ratio requirement should be recalibrated commensurately to offset the impact of the exclusion. This should ensure the exclusion of risks to financial stability affecting the relevant banking sectors, and that the resilience provided by the leverage ratio is maintained.

Article 429a CRR:

Article 429a

Exposures excluded from the exposure measure

1. By way of derogation from Article 429(4)(a), an institution may exclude any of the following exposures from its exposure measure:"

[…]

"(n) the following exposures to the institution's central bank entered into after the exemption took effect and subject to the conditions specified in paragraphs 6 and 7:

(i) coins and banknotes constituting legal currency in the jurisdiction of the central bank; and

(ii) assets representing claims on the central bank, including reserves held at the central bank."

[…]

"6. For the purpose of point (n) of paragraph 1 of this Article, an institution may exclude the exposures listed therein where both of the following conditions are fulfilled:

(a) the institution's competent authority has determined, after consultation with the relevant central bank, and publicly declared that exceptional circumstances exist that warrant the exclusion in order to facilitate the implementation of monetary policies; and

(c) the exemption is granted for a limited period of time not exceeding one year.

7. For the purpose of point (n) of paragraph 1 of this Article, the excluded exposures shall meet both of the following conditions:

(a) they are denominated in the same currency as the deposits taken by the institution; and

(b) their average maturity does not exceed the average maturity of the deposits taken by the institution.

8. By way of derogation from Article 92(1)(d), where an institution excludes the exposures referred to in point (n) of paragraph 1 of this Article, it shall at all times satisfy the following adjusted leverage ratio requirement (aLR) for the duration of the exclusion:

$$\mathrm{aLR} = 3\% \times \frac{\mathrm{EM_{LR}}}{\mathrm{EM_{LR}} - \mathrm{CB}}$$

Where:

EM_{LR} = the institution's total exposure measure as defined in Article 429(4), including the exposures excluded in accordance with point (n) of paragraph 1 of this Article;

CB = the amount of exposures excluded in accordance with point (n) of paragraph 1 of this Article."

Article 451

Disclosure of the leverage ratio

1. […]

(c) where applicable, the amount of exposures excluded from the exposure measure in accordance with Article 429a(1) and aLR as defined in Article 429(8);"

18.5 "Units" of a credit institution

Article 429a(2), new subparagraph at the end:

"For the purpose of points (d) and (e) of paragraph 1, competent authorities may, upon request, treat an organisationally, structurally and financially independent and autonomous unit of an institution as a public development credit institution, provided that the unit fulfils all the conditions listed in the first subparagraph of this paragraph and that such treatment does not affect the effectiveness of the supervision of that institution. Competent authorities shall immediately notify the Commission and the EBA of any decision to treat a unit of an institution as a public development credit institution. The competent authority shall annually review such decision."

18.6 CSD/CSD-banks

Article 429a(1), two new points preliminarily marked as (x) and (y):

"(x) where the institution is authorised in accordance with Article 16 and point (a) of Article 54(2) of Regulation (EU) No 909/2014, the institution's exposures arising from banking-type services listed in point (a) of Section C of the Annex to that Regulation which are directly related to core or ancillary services listed in Sections A and B of that Annex;

(y) where the institution is designated in accordance with point (b) of Article 54(2) of Regulation (EU) No 909/2014, the institution's exposures arising from banking-type services listed in point (a) of Section C of the Annex to that Regulation which are directly related to the core or ancillary services of a central securities depository, authorised in accordance with Article 16 of that Regulation, listed in Sections A and B of that Annex;"

The text above excludes cash balances due to deposits made by CSD clients (these apparently cover the majority of the expansion/contraction of the balance sheet of the CSD). The same is then done for CSD-banks. With the above language, there is no need for the definitions of CSD, CSD-bank and FMI in Article 4(1)."

13. Environmental Social and Governance risks (ESG-risks)

Article 98 - paragraph 7c - CRD

"7c. The EBA shall assess the potential inclusion in the review and evaluation performed by competent authorities of environmental, social and governance risks (ESG).
For the purpose of subparagraph 1, the EBA assessment shall comprise at least the following:
a) the development of a uniform definition of ESG risks including physical risks and transition risks. The latter shall comprise the risks related to the depreciation of assets due to regulatory changes;
b) the development of appropriate qualitative and quantitative criteria for the assessment of the impact of such risks on the financial stability of institutions in the short, medium and long term. This shall include stress testing processes and scenario analyses to assess the impact of ESG risks under scenarios with different severities;
c) the arrangements, strategies, processes and mechanism to be implemented by the institutions to identify, assess and manage ESG risks;
d) the analysis methods and tools to assess the impact of ESG risks on lending and financial intermediation activities of institutions.
The EBA shall submit a report on its findings to the Commission, the European Parliament and the Council by [two years after entry into force of this regulation].
On the basis of the outcomes of its report, the EBA may, if appropriate, adopt guidelines for the uniform inclusion of ESG risks in the supervisory review and evaluation process performed by competent authorities."

Art. 449a CRR (lines 4042-4045) is inserted:

"Article 449a CRR

Disclosure of ESG-related risks

"By way of derogation from Articles 433a (1) (a), 433a(2)(a) and 433c(1)(a), only large institutions which have issued securities that are admitted to trading on a regulated market of any Member State, as defined in point (21) of Article 4(1) of Directive 2014/65/EU, shall disclose information on ESG-related risks, physical risks and transition risks as defined in the report referred to in Article 98(7c) of Directive 2013/36/EU from ... [3 years after entry into force of this Regulation].

For the purpose of the first subparagraph, the information shall be disclosed annually the first year and biannually the second year and thereafter."

Article 501da CRR (lines 4408-4415) is inserted:

"**Article 501da**

The EBA, after consulting the ESRB, shall assess on the basis of available data and the findings of the High Level Expert Group on Sustainable Finance of the Commission whether a dedicated prudential treatment of assets exposed to activities associated substantially with environmental and / or social objectives, in the form of different capital charges, would be justified from a prudential perspective. In particular, EBA shall investigate:

i. methodological options for assessing exposures of asset classes to activities associated substantially with environmental and/or social objectives;

ii. specific risk profiles of assets exposed to activities which are associated substantially with environmental and/or social objectives;

iii. risks related to the depreciation of assets due to regulatory changes such as climate change mitigation;

iv. the potential effects of a dedicated prudential treatment of assets exposed to activities which are associated substantially with environmental and/or social objectives on financial stability and bank lending in the Union.

The EBA shall submit a report on its findings to the Commission, the European Parliament and the Council by [two years after entry into force of this regulation].

On the basis of this report, the Commission shall, if appropriate, submit to the European Parliament and the Council a legislative proposal."