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Trilogue analysis and advice on RRM prudential issues

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Introduction and key messages

The EBF supports the objectives of the Risk Reduction Measures (RRM) package to finalise the post-crisis regulatory reform agenda and strengthen the EU prudential and resolution frameworks for banks. In the final trilogue discussions, EU policymakers should aim to update the prudential and financial stability framework in a way that banks are able to:

1. Regain a competitive profile in the global financial market
2. Support market liquidity and short term financing activities
3. Take full advantage of the EU Single Market and the Banking Union
4. Finance the European economy and innovation
5. Making regulation and supervision fit for purpose and avoiding unnecessary burden for banks

To achieve these objectives, the EBF would like to provide the following key recommendations which are outlined in further detail in our comprehensive analysis and advice on the RRM trilogue positions attached in the annex (Please note also that resolution related issues such as grandfathering, general prior permission and breach of MREL are dealt with in a separate paper):

1. Regain a competitive profile in the global financial market by:

a) *Adhering to the Basel timeline on FRTB (Fundamental Review of the Trading Book)*

Key components of the FRTB are still being discussed at international level. The Basel Committee has recognised the flaws in the calibration of the standard published in January 2016 and is currently looking at adjusting them on an updated version expected by the end of 2018. On 7 December 2017 the Committee announced to defer the implementation and regularity reporting date for the standard to 1 January 2022 to allow banks additional time to develop the system infrastructure to apply the standard, to validate new internal models and for the Basel Committee to address outstanding issues.

The EBF welcomes the Council General Approach of implementing FRTB in CRR II in the EU as a reporting requirement; but we do not support any reporting requirements of the new Standardised Approach ahead of the Basel timeline. **(see detailed analysis and recommendations here)**.

b) Allowing capital instruments issued by subsidiaries located in third countries to be counted towards the consolidated capital requirements whenever they comply with local regulations that are as stringent as the EU regulation.

In order to avoid extraterritoriality issues, AT1 and T2 capital instruments issued by subsidiaries in third countries should be able to be counted towards the consolidated capital requirements whenever they comply with local regulations that are as stringent as the EU regulation. In addition, we propose that for AT1 and T2 capital instruments issuances by subsidiaries in third countries, the Point-of-non-viability is linked to the local authority's decisions whenever the local resolution authority has similar powers to the European resolution authority powers. Moreover, AT1 and T2 capital instruments and minority interests issued by intermediate holding companies in third countries should be computed as consolidated capital requirements when these holding companies are subject to prudential requirements as stringent as those applied to credit institutions of that third country and those requirements are deemed equivalent to the EU regulation. **(see detailed analysis and recommendations here)**.

c) *Adapting staff remuneration caps for digital banking employees*

In the new digital environment, it is necessary to ensure a level playing field between players where they perform the same activities. In order for banks to be able to attract digital talent they need to change the remuneration profile in a radical manner to compete in the Fintech environment. The EBF advocates for more flexibility in the CRD IV to allow banks to hire digital talent on an equal footing to other sectors by exempting start-up founders and other key digital employees from the current remuneration caps **(see detailed analysis and recommendations here)**.

d) Requiring the review of the Standardized Approach of the Counterparty Credit Risk as soon as possible

The Commission proposal leads to the transposition in Europe of a revised framework, without any clear evaluation of the side effects of this measure. As a consequence, the impacts of the revised CCR framework on the credit valuation adjustment (CVA) capital requirements and on the leverage ratio (the 1.4 alpha factor calibration should be reviewed),has not been assessed and no update of the credit risk mitigation (CRM) framework has been considered. We support the European Parliament and the Council proposal to amend Article 514 (CRR) in order to confide to the EBA a report evaluating the impact and the calibration of the CCR framework. Nevertheless, we consider the EBA report should be published earlier than 4 years after the entry into force of CRR2 **(see detailed analysis and recommendations here)**.

e) Support efficiency in regulatory reporting requirements

Regulatory reporting requirements have increased heavily in recent years introduced by different authorities. Data points asked are often duplicative and overlapping with each other and the definitions used are unclear. We strongly support European co-legislators to find ways to improve interoperability, efficiency, standardization and streamlining of regulatory and statistical reporting requirements and we support co-operation between different authorities, mainly the EBA, ECB and the SRB **(see detailed analysis and recommendations here)**.

2. Support market liquidity by:

e) recalibrating the Net Stable Funding Ratio to support market liquidity with symmetric treatment of repos and reverse repos

The NSFR is designed to reduce bank reliance on short-term wholesale funding relative to more stable sources of funding. Short-term repo and reverse repo transactions on HQLA collateral are essential for the bank's treasury to steer the bank's liquidity position.

Any asymmetrical treatment between repos and reverse repos, which are essential instruments for market making activities, would be detrimental to market liquidity, while market liquidity is the fundamental assumption of the LCR, and to the price of securities. A consistent treatment for Level 1 asset (essentially government bonds) should be applied, be they owned by the bank, which are allocated a 0% RSF, or be they obtained from reverse repo. We fully support the European Parliament proposal on reverse repos treatment including the review clause after 2 years with no automatic fall back to the BCBS rules, but with a new EC legislative proposal if need be **(see detailed analysis and recommendations here)**.

3. Support short term trade receivables financing techniques by:

f) recalibrating the Net Stable Funding Ratio to support trade finance and similar short term trade receivables financing techniques like factoring.

Trade finance, like all short-term trade receivables financing techniques such as factoring), plays a key role in the real economy as it enables the financing of commercial transactions of exporting and importing firms via lending, issuing letters of credit or trade related guarantees. Trade finance and short-term trade receivables financing techniques are major instruments for the financing of European corporates. Trade finance products are generally secured against the traded goods, self-liquidating in nature and, even in crisis conditions, pose only limited risk to banks and overall financial stability). The financing maturity is directly linked to the receivables due date. Moreover, short term trade receivables financing techniques, like trade finance, are a flexible form of financing, since the bank or the financial entity can refuse the purchase of new receivables on a unilateral basis, preventing any spill-over effect in case of stress scenario. These techniques, notably factoring[1] and forfaiting should receive the same treatment as trade finance for the Liquidity requirements. In addition, even if we welcome the European Parliament improvement of the Trade Finance off-balance sheet treatment in the NSFR, we believe that a 5% RSF should apply, regardless of the maturity. **(see detailed analysis and recommendations here).**

[1] It is worth noting that for the NSFR, this is also recommended by the EBA in its December 2015's NSFR report for factoring and forfaiting, and that Delegated regulation 2015/61 (art. 33.3) explicitly mentions factoring as a business model that may be exempted from the inflow cap, thus receiving preferential treatment.

4. Take full advantage of the EU Single Market and the Banking Union by:

g) recognising the eurozone single constituency in the banks' systemic scoring

The cross-border activity indicator overstates the systemic importance of activities within the Banking Union. Intra-eurozone banking activities (including the local activities of subsidiaries and local central bank deposits) are accounted for in the same way as cross-border activities conducted outside the eurozone. The lack of recognition of the EU Single Market and of the Banking Union as prudential realities for systemic risk purposes neglects the objectives of achieving a free flow of capital and liquidity and dismisses the significant accomplishments made in the EU in terms of the Single Rulebook, Single Supervision and Single Resolution. A more adapted calculation which takes into account what has already been achieved in the eurozone would free up capacities in banks' balance sheets, at a time where European economic growth is gathering pace and needs financing. Cross-border activities between SSM countries should be removed from the indicator **(see detailed analysis and recommendations here)**.

h) supporting capital and liquidity waivers and make liquidity waivers at solo level automatic and not discretionary for NSFR purposes within the Banking Union

Waivers are an effective tool to remove the obstacles to the free flow of capital and liquidity across Member States of the Single Market and the Banking Union.

Enabling the free flow of capital and liquidity across borders is critical and fundamental for improving financial stability.

For NSFR purposes, the liquidity subgroup status should be automatically granted for subsidiaries within the same Member State or different Member States of the EU single market and Banking Union. Indeed, the double requirement, both at solo and consolidated level, does not reflect the way liquidity is managed in most centrally managed banking groups. This is all the more the case within the eurozone as there are no restrictions on the movement of capital and payments **(see detailed analysis and recommendations here)**.

i) granting preferential treatment for intragroup transactions

The preferential treatment for intragroup transactions should be granted automatically and not subject to supervisory discretion. The European Union is a single market, in which the financial sector benefits from a common prudential regulatory framework in all EU Member States. Furthermore, within the European Union, the majority of Member States (Euro Area and other Member States opting to participate) are also part of the Banking Union which provides a Single Supervisory Mechanism (SSM) and a Single Resolution Mechanism (SRM). Due to these significant advances of the single market and single rulebook, banking groups with an EU parent institution should be treated equally in the European Union, especially in the Banking Union. Preferential intragroup treatment of NSFR should be supported within the Single Market and Banking Union **(see detailed analysis and recommendations here)**.

5. Finance the European economy and innovation by:

j) *maintaining and extending the SME Supporting Factor (SF)*

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 1.5 million are subject to a 23.81% reduction in risk weighted exposure amount. However, we would support any amendment aiming at raising this threshold and extending the application of the supporting factor for exposure amounts over the defined threshold **(see detailed analysis and recommendations here)**.

k) *supporting bank lending for infrastructure projects*

We encourage the possibility to free up resources to support infrastructure financing, crucial to revamp the economy. We deem however that the list of eligibility criteria is too restrictive, thus limiting the qualifying projects. Therefore, we support amendments aiming at maximizing the effectiveness of the supporting factor **(see detailed analysis and recommendations here)**.

l) *supporting bank lending for sustainable finance*

The EBF recognises the need for an energy transition and the decarbonisation of banks' balance sheets. In connection with the current work on sustainable finance, we understand that the best way to ensure the most accurate outcomes is to follow a sequential approach: first regarding taxonomy and an appropriate disclosure as it will clearly define what we understand as sustainable; and second, evaluate the convenience to work on prudential requirements. We are supportive of the proposal of the parliament with regards to the EBA tackling this work and urge to improve the timeline **(see detailed analysis and recommendations here)**.

m) *Treatment of equity securities hedging derivatives in the Net Stable Funding Ratio:*

Equity securities hedging derivatives receive a unjustified penalizing RSF treatment that will impact ends-users capacity to hedge against risk. The inclusion of a monitoring exercise on the appropriate treatment applied to securities hedging derivatives (paragraphs 7a and 7b of article 510 (CRR)) in the Parliament report is a first step in the right direction, but is not enough and should be complemented during the trilogues by a lower calibration of the RSF for equity derivatives held as hedges in specific situations (e.g. when the equity instrument is liquid). This is necessary to avoid significant impacts on equity markets during the period preceding the review clause. Consistent with Article 8 paragraph 5 LCR DA, the NSFR should treat derivative hedges together with the liquid assets to be hedged. ***(see detailed analysis and recommendations here)***.

n) *exempting all export credit exposures from the Leverage Ratio*

The EBF supports excluding ECA exposures by means of Article 114(2) in such a way that not only exposures guaranteed in the currency of the specific Member State in where the ECA is based would be excluded in case they comply with the characteristics laid down in the article. However, we strive for the full exemption of all OECD ECA exposures from the application of the leverage ratio, irrespective of the rating of the country to which the ECA belongs and the currency of denomination of the exposure. This approach is key for the successful continuation of the export finance business **(see detailed analysis and recommendations here)**.

o) *adjusting the risk weight exposure amount for investment in private equity in the form of units or shares in a Collective Investment Undertakings (CIU)*

The private equity industry plays an important role in delivering smart, sustainable and inclusive growth that creates jobs and enhances long-term competitiveness of the European Union. However, this role partly depends on the relationship that this industry has with the banking sector. We believe it is important to ensure that the existing CRR rules do not disincentivise banks' investments into private equity that provide financing to innovative and growing companies. The EBF therefore supports a preferential regime to private equity exposures under both the standardised and IRB approaches in the form of shares or units of a fund, provided these meet certain conditions which we deem adjusted to the tasks Venture Capital Funds do as investors in unlisted SMEs **(see detailed analysis and recommendations here)**.

p) *removing the deduction of software from banks' regulatory capital*

The current regulatory capital framework for credit institutions does not recognise the value of software for capital purposes, which is a significant disincentive for investment in innovations. Indeed, banks contribute to the digitalisation of the EU economy. They need to invest in software development to remain competitive and to strengthen their cybersecurity. Emerging fintech players and non-EU banks (US and Swiss at least) do not face the same heavy regulatory burden imposed on the European banking sector. The EBF therefore supports an exemption for software from the capital deduction to support business critical investments to be made in IT structures and to further evolve within the digital era. The EBF therefore supports the European Parliament's amendment **(see detailed analysis and recommendations here)**.

q) *Maintaining consistency with prudential supervisory expectations*

P2G is a supervisory expectation that has to be met at all times, and therefore, in terms of the calculation of minority interest, P2G should have the same treatment as P2R. In this sense, both components of Pillar 2 should be reflected in the surplus capital calculation for the amount determining minority interests and be included in the consolidated CET1 capital **(see detailed analysis and recommendations here).**

6. Making regulation and supervision fit for purpose and avoiding unnecessary burden for banks

r) *alleviating the administrative burden on small and non-complex institutions*

We support the objective to allow small and non-complex institutions to benefit from less stringent reporting and disclosure and remuneration requirements insofar as the principle of 'same activities, same risks, same rules' is applied. Should the proportionality principle be extended to simplified requirements, the minimum solvency and liquidity ratios should be appropriately calibrated to ensure similar prudence, to maintain equality of treatment and not to jeopardise the consumer protection and the level playing field. This will reduce administrative costs in a proportionate manner for such institutions without watering down prudential standards. Should a simplified NSFR be adopted small and non-complex banks should have the choice to adopt it or the standard NSFR **(see detailed analysis and recommendations here)**.

s) *removing daily reporting requirement for NSFR in case of breach*

The CRR2 working draft requires a daily NSFR reporting in case the NSFR might fall below 100% (according to Article 428b (3) and 414). Taking into account the principle of proportionality a daily reporting of the NSFR should be omitted. As the NSFR is a structural liquidity ratio and its information is based on balance sheet positions which are reported on a monthly basis, banks should not be required to calculate balance sheet data on a daily basis. While the information gain is very limited, the effort for this is excessive. **(see detailed analysis and recommendations here)**.

t) *keeping current simplified methods for counterparty credit risk*

In our view the proposed simplified approaches to measure counterparty credit risk are not necessary for smaller banks with small derivative business because they will cause important implementation and calculation costs without delivering significant added value for banks and supervisors. We therefore recommend maintaining the simplified methods (Mark-to-Market and current Original Exposure Method – OEM -) instead of the new simplified standardised approaches. We also recommend to increase the thresholds, which would benefit smaller banks and reduce complexity and regulatory burden for them **(see detailed analysis and recommendations here)**.

u) *keeping current well-functioning large exposure regime*

The current calculation basis (i.e. under partial inclusion of Tier 2 capital) should be maintained. The proposed restriction to Tier 1 in CRR II is too restrictive, as this change alone posed considerable challenges to institutions in terms of their large exposure limits and thus their ability to lend.

The application of credit risk mitigation techniques should be voluntary and the value of the collateral should not be added to the institution's exposure to the collateral provider. (No mandatory substitution.) The mandatory use of collateral for credit risk mitigation purposes poses major challenges to the institutions and would have a large impact on repo and securities lending transactions. The conclusion of such transactions would in future be much more difficult or even no longer possible, because the daily monitoring of the large exposure limits of collateral providers cannot be controlled by the institutions. This would have a drastic impact on the banks' liquidity situation. The repo and securities lending market is an important source of short-term funding for the banking industry.

It should be permissible to use the internal models method (IMM) not only in the solvency regime but also for the purposes of the large exposures regime. Especially since to US has finalised its version of the Large Exposure framework (mid-June 2018) and allows US banks continue to use internal models to measure the exposure to derivatives.

Harsher European limits should be avoided **(see detailed analysis and recommendations here)**.

v) aligning remuneration policies and practices with effective risk management

The EBF advocates against setting a pay ratio as well as demanding a gender neutral remuneration policy as these would be misplaced in the prudential risk framework because they have no link with the objective of the CRD which is to reinforce the alignment of the remuneration policies and practices with effective risk management **(see detailed analysis and recommendations here)**.

w) *aligning the IRRBB requirements with the Pillar II framework*

The Pillar 2 assessment should remain an idiosyncratic process. It is not appropriate to create technical standards to standardise Pillar 2 risk metrics (notably Pillar 2 risks should be measured through net interest income). EBA guidelines should not impair the flexibility of credit institutions and supervisors **(see detailed analysis and recommendations here)**

x) Maintaining transitional measures for the Danish compromise[2]

CRR Art. 49 (on Danish Compromise) itself does not refer to 31.12.2022. The 31.12.2022 deadline is in CRR Art 471 (transitional measure regarding the deduction method), but that article is overruled by Article 16 in the ECB Regulation 2016/445 of 14/03/2016. The latter requires entities which have not received permission to apply the Danish Compromise to deduct holdings in insurance undertakings already as from 1-1-2019.

The EP amendment in CRR Art. 49 aims to avoid that this ECB provision enters into force:

- until 31-12-2022, institutions are allowed not to deduct insurance undertakings without prior permission of the ECB

[2] The Italian Banking Association does not agree with this position.

- after 31-12-2022, ECB may permit institutions not to deduct insurance undertakings

However, the proposed EP adjustment triggers a concern for financial conglomerates already benefiting from a permission. Following the EP proposal, the competent authority would have to give a new permission to these conglomerates to apply Danish Compromise after 31 December 2022. EBF objects to this EP proposal and wants to keep Article 49(1) CRR unchanged (cf. Council proposal)" **(see detailed analysis and recommendations here)**.

y) Not imposing an unnecessary reporting burden for the Leverage ratio, by requiring a daily calculation

Such a requirement will have minimal added value but lead to heavy administrative burden and very costly IT investments (in a context where the priority is to invest in digital solutions) as the current practice in Europe is to calculate the Leverage ratio on a quarter end position.

z) Aligning and limiting public disclosure with agreed requirements

The disclosure of quantitative data in relation to the future Standardised Measurement Approach in operational risk should be required only when SMA enters into force (in the next CRR3-CRD6). Hence, we support Council proposal. The review should refrain from anticipating proposals which are still being considered by the Basel Committee such as the capital floors effect by risk type.

Also, the disclosure requirements arising from the Danish Compromise would defeat the purpose of Article 49(1) of the CRR and the associated exemption decisions made by competent authorities.

Finally, Pillar 2 Guidance disclosure should not be required, as proposed by Parliament in Recital 11 **(see detailed analysis and recommendations here)**.

Annex - EBF Trilogue analysis and advice on RRM prudential issues

Market Risk

Issue/Reference	European Council Position	European Parliament Position	EBF Position	EBF Recommendations
FRTB – Application / Transposition calendar of the FRTB -CRR Art. 3, 101a, 325 and 501b-	FRTB-Reporting Requirements in 2020 or 2021 before Basel's deferred implementation and reporting date to 1 January 2022. No capital requirement.	FRTB capital requirement starting in 2022 without FRTB adjustment that should be issued by the Basel Committee by the end of 2018. No earlier reporting requirements.	The EBF supports Council approach, but rejects reporting requirements before Basel's timeline (no reporting before 1 January 2022). The Parliament approach would imply reporting and capital requirements based on outdated marked risk framework by 2022, without the latest international developments (FRTB 2.0). This capital requirement will apply for a short period, before a revised new requirements, including revised trading book definition, will be implemented into EU regulation following a new proposal from the Commission based on the capital requirement standard that will be issued by the end of 2018. The Parliament proposal is considered unworkable	Support Council approach, but no front-running of the Basel timeline (1.1.2022) for reporting requirements.

FRTB - Art. 325a (1) Application of simplified standardized approach: absolute threshold	Use of simplified approach (Art. 325a): 10 % of total assets / EUR 500m (EU-COM: EUR 300m)	Added individual permission by the competent authority to use simplified approach, if exposure size is between EUR 300m and EUR 500m.	Use of simplified approach: EBF pleads for "the higher of" both thresholds to not exclude certain cases of smaller banks from usage of simplified approach.	At least: increase absolute threshold to EUR 500m, without individual permission by the competent authority
FRTB - Thresholds „small" trading book (Art. 94)	Analogue EU-COM (5 % / EUR 50m)	Analogue EU-COM (5 % / EUR 50m)	EBF pleads for threshold 10 % balance sheet total / EUR 150m	
FRTB - *Structural hedges of foreign exchange risk* *-CRR Art. 325c-*	Removal of the Commission proposal to replace article 352(2) by article 325c as regards the ongoing work of the Basel Committee on this issue.	Technical amendments to the Commission proposal.	If we consider the ongoing works led by the Basel Committee on the structural foreign exchange position, the EBF supports the removal of Article 325c (CRR) from the draft regulation, as proposed in the Council compromise text. Article 352(2) (CRR) should continue to apply and be completed by the conclusions of the discussion paper (EBA/DP/2017/01) published by EBA on June 2017.	EBF Amendment: Delete Art. 325c and maintain Art. 352(2)

FRTB - Inclusion in the trading book	Withdrawal of the modification proposed by the Commission to Article 104 on the frontier between the banking book and the trading book.	Technical amendments to the Commission proposal.	If we consider the ongoing works of the Basel Committee on boundary issues, the EBF supports the removal of Article 104 (CRR) from the draft regulation, as proposed in the Council compromise text. Article 104 of Regulation (EU) 575/2013 should continue to apply. Nevertheless, it should be considered that paragraphs (3)(d) and (10) of Article 104 (CRR) and Article 325k (CRR) of the Commission proposal are welcomed due to the sensitivity of European banks to such collective investment undertaking (CIU) concerns. Thus, we support the wording provided in the Parliament report, unless the Basel Committee proposes more flexible criteria in the final standards.	If the Parliament report is adopted, the following typo should be modified in paragraph 4 of article 104 (CRR): "4. Notwithstanding paragraph 2, an institution may not assign a position in an instrument referred to in points (e) to ~~(i)~~ **(j)** of paragraph 2 to the trading book where that institution is able to satisfy the competent authorities that the position is not held with trading intend or does not hedge positions held with trading intend."
FRTB - Requirements for trading desk -CRR Art. 104b-	Technical amendments to the Commission proposal	Technical amendments to the Commission proposal	The EBF considers neither the Council compromise nor the Parliament report as satisfactory as regards requirements for trading desk. Indeed, as long as the Basel Committee is still working on trading desk requirements, Article 104b	Nevertheless, if article 104b (CRR) is maintained in the final text, the 2 following adjustments should be considered as they are neither in the Council compromise text nor in the Parliament report: 1) To improve the organisation of desks dedicated to internal hedges, paragraph 2(b) of article 104b should be modified as follows : "(b) each trading desk shall have a clear organisational structure; positions in a given trading desk shall be managed by designated dealers within the institution; each dealer shall have dedicated functions in the trading desk; one dealer shall be assigned to one trading desk only; one dealer in each trading desk shall take a lead role in overseeing the

			(CRR) should be removed from the legislative proposal. Indeed, in its consultation launched on March 2018 (i.e. BCBS d436), the Basel Committee proposes some refinements and recognizes that "the requirement for a single head trader per desk and the restriction that a trader may only be assigned to a single trading desk – could conflict with the way banks organise their trading desks." (cf. paragraph 2.1.4).	activities and the other dealers of the trading desk. **<u>This condition shall not apply for the purpose of the trading desk referred to in point (a) of Article 106(5);</u>** 2) Not to apply and to define inadequate ex-ante requirements to desks dedicated to internal hedges and due to their activity on banking book positions, paragraph 2(c) of article 104b should be modified as follows: "(c) position limits shall be set within each trading desk according to the business strategy of that trading desk. **<u>This condition shall not apply for the purpose of the trading desk referred to in point (a) of Article 106(5)</u>**;"
FRTB - Internal risk transfer (IRT) -CRR Art. 106-	Technical change to the Commission proposal	No change to the Commission proposal	The EBF considers that IRT trading desk should not be capitalized on a standalone basis under certain conditions. Indeed, to manage their risks in a consistent manner banks have usually centralized the management of their market risks in a specialized subsidiary which is capitalized on a standalone basis. When the subsidiary offers hedging services to its customers, it is usual that the interest rate risk hedges of the Banking Book (IRRBB) of all entities within the Group are executed with a trading desk solely dedicated to the commercial hedging activity.	

			The mandate of this trading desk is to offset the market risk with third parties. We therefore believe that intragroup risk transfers should be allowed to be executed with a trading desk of a subsidiary or parent entity provided this trading desk is governed by strict requirements and a robust internal control framework. Besides, the positions related to IRRBB exposures should be attributed to a supervisory-approved internal risk transfer (IRT) desk which should hedge the positions by entering into other interest rate risk exposures: - either directly with external third parties; - or via other non-internal risk transfer trading desk which will in turn globally hedge these positions with the market. To ensure that the internal risk transfer desk appropriately offset market risks arising from banking book exposures, the institution should establish, policies, procedures, internal	

			controls, analyses and independent reviews. We consider the new requirements defined in article 106 (CRR) should only apply after the transposition in Europe of the ongoing works of the Basel Committee on boundary issues: it should only apply to GIRR IRT traded after the application date of the new market risk requirements. We think that it is not possible to implement the new IRT requirements on existing interest rate risk hedges, which include both Banking Book and client hedges, by “rebooking” the portion related to the hedges of the Banking Book. Therefore, we strongly advocate that the proposed requirements apply only to new interest rate risk internal hedges of the banking book. Article 106 should continue to apply as defined in Regulation (EU) 575/2013.	
FRTB - Assessment of the modellability of risk factors	Removal of the requirement to assess the modellability of risk factors as regards the latest Basel developments	Technical changes to the Commission proposal	To be consistent with the latest developments at the Basel level, the EBF supports the Council compromise proposal amending Article 325bf (CRR).	

-CRR Art. 325bf-				
FRTB - Calculation of stress scenario risk measure -CRR Art. 325bl-	No change to the Commission proposal	Earlier issuance of the EBA report	The EBF welcomes the proposal of the Parliament report asking the EBA to submit the regulatory technical standards defined in paragraph 4 of Article 325bl (CRR), six months after the entry into force of this Regulation, as regards the sensitivity of this standard. As such, we are of the view that the Council's proposal convergences to the one of the Parliament.	
FRTB - Disclosure of risk weights under the standardised approach and under internal models -CRR Art. 438-			The EBF supports the deletion, in the Council compromise and in the Parliament report of paragraph (i) of Article 438 (CRR).	

CCR: *Review clause -CRR Art. 514-*	Update of article 514 (CRR) with the introduction of a review report.	Update of article 514 (CRR) with the introduction of a review report.	We support the European Parliament and the Council proposal to amend Article 514 (CRR) in order to confide to the EBA a report evaluating the impact and the calibration of the CCR framework. Nevertheless, we consider the EBA report should be published earlier than 4 years after the entry into force of CRR2. Additionally, it is important that not only the calibration but also the methodology of the new approaches itself is re-evaluated. As a consequence, the EBF asks for an amendment to Article 514(1) (CRR) introduced by both the Parliament report and the Council compromise. Moreover, the small number of amendments brought by the European Parliament and by the Council of the EU on the Commission proposal leads	updated counterparty credit risk framework, potential future exposure (PFE) and. We consider the amendment to Art. 514 proposed by the Council and by the Parliament should be revised as follows:"1. The EBA shall... [~~four~~ **one** year~~s~~ after entry into force of this Regulation], report to the Commission on the **impact, relative calibration and appropriateness of the methodologies of the approaches** set out in Part Three, Title II, Chapter 6, Sections 3 to 5, used to calculate the exposure value of derivative transactions, **for the purpose of the capital, the large exposure and the leverage ratios**. **The analysis shall take into account cross effects on the CVA Risk Capital Charge."**

			to the transposition in Europe of a revised framework, without any clear evaluation of the side effects of this measure. As a consequence, the impacts of the revised CCR framework on the credit valuation adjustment (CVA) capital requirements and on the leverage ratio has not been assessed and no update of the credit risk mitigation (CRM) framework has been considered. We hope that the future transposition in Europe of the agreement of the Basel Committee published on December 2017, with an updated framework for market risk capital requirement, will consider the cross effects of the CCR framework, the CVA framework and the FRTB framework before the introduction of any new capital requirement.	

			Indeed, before the future update of the banking package, we fear undesirable capital requirement consequences due to the application to the CVA capital requirement of the exposure at default (EAD) calculated with the new CCR framework.	
CRR: Requirements for application of the Simplified Methods – CRR Art. 273	Replacement of OEM and MtM with the much more complex revised OEM and the Simplified SA-CCR, respectively. Thresholds regarding derivative business: - SSA-CCR: 10% total assets *and* 300 million - Rev. OEM: 5% *and* 100 million	Replacement of OEM and MtM with the much more complex revised OEM and the Simplified SA-CCR, respectively. Thresholds regarding derivative business: - SSA-CCR: 10% total assets *and* 300 million - Rev. OEM: 5% *and* 100 million	EBF agrees with EBA (November 2016 report) to maintain the current OEM and the MtM for banks with low derivatives activity. The EP/Council thresholds are still not in line with the original EBF position: - SSA-CCR: 10% *or* 150 million - Rev. OEM: 10% *or* 150 million However, some parts even less strict than according to the EBF proposal and the EP/ Council proposal is definitely favourable compared to the COM version (SSA-CCR: 10% and	Retain current OEM and MtM for smaller banks. (As the original EBF recommendation is most likely not going to be followed) Choose the proposal of the EP and the Council.

			150 million; Rev. OEM: 5% and 20 million)	
CCR: Scope of the OEM – CRR Art 282	Derivative transactions in all asset classes	Derivative transactions in all asset classes	It would be helpful to make the (rev) OEM applicable to all kinds of derivatives transactions compared to only IR, FX and Gold contracts as according to COM proposal.	Choose the proposal of the EP and the Council.

Annex - EBF Trilogue analysis and advice on RRM prudential issues

Liquidity Risk – NSFR

Issue/Reference	European Council Position	European Parliament Position	EBF Position	EBF Recommendations
NSFR - Asymmetric treatment of repos/reverse Repos -CRR Art. 428r, 428s & 510(6) & 510(7)- **<u>HIGH PRIORITY</u>**	**No mention**	**The EBF welcomes the proposals of the Parliament report on articles 428r and 428s (CRR) to apply a symmetrical treatment on level 1 assets that have a residual maturity of less than six months and resulting from secured lending transactions and capital market-driven transactions. It is essential not to destabilize European capital market making activities (and therefore European market liquidity) with the introduction of the NSFR. The amendments proposed by the European Parliament on Article 510 (CRR) are interesting considering they delete any automatic revision of the required stable funding (RSF) requirements. The EBF supports the amendments proposed by the European Parliament on paragraphs**	**The NSFR penalises matched book transactions, since the negative impact of the reverse repo leg more than offsets the positive impact of the repo leg. Notably, the asymmetrical treatment of repos (0% ASF) and reverse repos (5-10% RSF) risks reducing market liquidity and disincentives banks to provide liquidity to the financial market due a lowering of supply, reduced volumes and increased prices for these transactions.** **Applying an asymmetrical treatment to short-term repo and reverse repo transactions on HQLA 1 collateral in the NSFR restricts a bank's treasury to steer its liquidity position and limits the flow of cash and securities around the financial system. Any asymmetrical**	**We support the Parliament text to avoid asymmetric treatment: 0% RSF for short term HQLA1 reverse repos with financial counterparties, at least with regulated financials, including CCPs, PSEs, MDBs and NDBs.**

		6 and 7 of article 510 (CRR) (the Council mentions a possible fall back to BCBS rules).	**treatment between repos and reverse repos, which are essential instruments for market making activities, would be detrimental to market liquidity, while market liquidity is the fundamental assumption of the LCR, and to the price of securities.** **EBF recommends adopting a consistent treatment for Level 1 asset (essentially government bonds) be they owned by the bank, which are allocated a 0% RSF, or be they obtained from reverse repo.**	
NSFR - Stable funding for gross derivative liabilities & dedicated treatment for securities hedging derivatives- CRR Art.		**The inclusion of a monitoring exercise leading to an EBA report and a potential Commission legislative proposal on the appropriate treatment applied to securities hedging derivatives, as defined in paragraphs 7a and 7b of article 510 (CRR) of the Parliament report is a very interesting issue supported by the EBF.**	**A two years delay between NSFR effective application date and start of the studies on a potential reassessment of the regulation would lead to a straightforward contraction of derivatives markets and, as a consequence of the capacity of end-users to hedge of their risks.**	**We support the application of the 5% RSF for margined derivatives in line with the recent revised Basel rules (cf. CRR2 Article 428s).** **We would hence support a removal of the two years delay (CRR Article 510(4) and (5)). As soon as Basel would finalize and adjust its position on this point (as previously done on add-on), EU should be able to adjust without any delay.** **Moreover, it should be considered that in its "Frequently asked questions on market risk capital requirements" issued on March 2018 (BCBS d437, paragraph '1.10 - Default risk', Question 3), the Basel Committee underlines the link between the hedging instrument and the underlying equity instrument. This already constitutes a first step at Basel Level in the acknowledgment of the**

510(7a) & 510(7b)- **HIGH PRIORITY**				**rationale of securities hedging derivatives packages overall specific treatment (CRR Article 510(7a) and (7b)).** **Consistent with Article 8 paragraph 5 LCR DA, the NSFR should treat derivative hedges together with the liquid assets to be hedged.**
NSFR - Trade finance and similar products (factoring) - -CRR Art. 428s, 428ta & 428u- **HIGH PRIORITY**	**"DEFINITIONS AND LIQUIDITY REQUIREMENTS".** **(103) Article 411 is replaced by the following:** **"Article 411** **Definitions** **For the purposes of this Part, the following definitions shall apply:**	**"DEFINITIONS AND LIQUDITY REQUIREMENTS".** **(103) Article 411 is replaced by the following:** **"Article 411** **Definitions** **For the purposes of this Part, the following definitions shall apply:** ***(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***	**a) We regret the lack of consideration of this issue. The initial required stable funding requirements defined by the Commission do not reflect any international standard, as the Basel Committee has not calibrated specific factors for trade finance off-balance sheet operations. The EBA report on the NSFR, published on December 2015 (i.e. EBA Opinion EBA/Op/2015/22), proposed the application of maturity based RSF Factors for off-balance sheet trade finance commitments.** **However, trade finance off-balance sheet related products should not be more detrimentally treated**	**a) We urge the European co-legislator to apply a 5% required stable funding factor to all trade finance off-balance sheet commitments regardless of their residual maturity (CRR Article 428s).** **The Parliament position on trade finance should be supported in principle noting that further changes still need to be considered on the NSFR proposals to ensure an international level-playing field.** **b) We fully agree with the Parliament's position in which Factoring receives the same treatment as trade finance for the liquidity requirements defined in Part VI of Regulation 575/2013 (CRR Article 411(15a)). It is worth noting that it was also recommended by the EBA in its December 2015's NSFR report, recognizing that *"a low RSF requirement could be justified by the low liquidity risk given that inflows and outflows for trade finance are typically matched, small in value, short in duration, and have an identifiable source of repayment[3]"*.** **Factoring, from the perspective of liquidity inflows and outflows and asset-liability management, shares most of the peculiar features of trade finance and therefore, similarly, a consistent treatment would be justified.** **We recommend this alignment to be made for all the short-term trade receivables financing techniques, including forfaiting.**

[3] EBA Report on Net Stable Funding Requirements under Article 510 of the CRR, page 115 https://www.eba.europa.eu/documents/10180/983359/EBA-Op-2015-22+NSFR+Report.pdf

		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."*** **.**	**than committed facilities for which a 5% RSF applies whatever the maturity is.** **b) Like trade finance, factoring is a major instrument for the financing of European enterprises. Factoring in Europe represents around 60% of global turnover, that's around €1.6 trillion euros, or 10.5% of European GDP (source: EUF). Almost €220Bn of funding is supporting over 200,000 European businesses, 87% of which are SMEs. A Study Group established by the Committee on the Global Financial System affirms that factoring supports the firms' ability to extend trade credit to their customers, recognizing that it is as important as trade finance. Factoring, as well as all the short term trade receivables techniques, are short term uncommitted financing, with a low funding risk profile.**	

NSFR – Covered bonds – -CRR Art. 411 & 428af-	The EBF welcomes the refinements brought by the Parliament report and by the Council compromise on covered bond. Indeed, covered bond activity is a European specificity and needs some refinements when transposing in Europe any international standard.		We welcome the revision of the definition of non-mandatory over-collateralisation in paragraph 6 of article 411 (CRR) and strongly support the Parliament additional deletion of the reference of "market discipline reasons". The Parliament wording is consistent and operationally aligned with market practices. Moreover, the application in article 428af (CRR) of an 85% required stable funding requirement to assets encumbered for a maturity of one year or more in a cover pool funded by covered bonds, is a balanced measure.	Consider supporting Parliament text.
Simplified methods for NSFR **HIGH PRIORITY**	Article 428b The net stable funding ratio 1. The detailed net stable funding requirement laid down in Article 413(1) shall be equal to the ratio of an institution's available stable funding as referred to in Chapter 3 of this Title	Article 428b The net stable funding ratio 1. The detailed net stable funding requirement laid down in Article 413(1) shall be equal to the ratio of an institution's available stable funding as referred to in Chapter 3 of this Title to the institution's required stable funding as referred to in Chapter 4 of this Title		Should a simplified NSFR be agreed it is of great importance that in CRR it remains an option for each single bank to consider, with no influence of Member states or National Competent authorities to dictate the choice. Therefore, EBF supports the Parliament amendment that entails the sentence "***Small and non-complex institutions may choose 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, over a one-year period and expressed as a percentage."***

	to the institution's required stable funding as referred to in Chapter 4 of this Title and shall be expressed as a percentage. Institutions shall calculate their net stable funding ratio in accordance with the following formula:	over a one year period and shall be expressed as a percentage. ***Small and non-complex institutions may choose 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, over a one year period and expressed as a percentage.*** Institutions shall calculate their net stable funding ratio in accordance with the following formula:		
NSFR-Definition-Retail deposits -CRR Art. 411-			In the explanatory memorandum of the revised Delegated Regulation on the Liquidity Coverage Ratio[4] (adopted by the Commission on July 13th, 2018), it is stated the following: « *As a result of the feedbacks received, some **<u>proposed changes were removed to revert to the existing provisions of the LCR Delegated Regulation. One such case</u>***	The EBF proposes the following amendment of article 411(2) of the Commission proposal: "*(2) 'retail deposits' means a liability to a natural person or to a small or medium-sized enterprise ('SME'), where the SME would qualify for the retail exposure class under the standardised or IRB approaches for credit risk, or a liability to a company which is eligible for the treatment set out in Article 153(4), and where the aggregate deposits by ~~that SME or company~~ **<u>all such enterprises on a group basis</u>** ~~on the basis of a group of connected clients as defined in point (39) of Article 4(1)~~ do not exceed EUR 1 million**<u>; 'Retail Deposits' include notes, bonds and other debt securities issued by the credit institution, when at least one of the following situation apply to those bank's liabilities:</u>*** ***a) <u>liability is sold exclusively in the retail market and held in a retail account;</u>***

[4] Please see : http://ec.europa.eu/transparency/regdoc/rep/3/2018/EN/C-2018-4404-F1-EN-MAIN-PART-1.PDF

			is the definition of retail deposits *for which a major part of comments received criticised the introduction of the concept of* ***"connected clients" as not being adequate from a liquidity risk perspective and very challenging to implement*** *due in particular to data availability.* ***This definition was then removed from the text*** *not to duplicate the definitions of the CRR.* » The EBF welcomes the fact that the European Commission agreed on the inappropriateness of the concept of '*connected clients*' for liquidity purposes, and as a consequence decided to revert to the existing provisions of the LCR Delegated Regulation. However, this reversion is formalized by the deletion of Article 3(8) ('*retail deposits*') of the LCR Delegated Act (2015/61) and by a link to CRR definitions. However, article 411(2) (CRR) of Commission proposal includes the	***liability is held in a dossier linked to a retail account of the issuer institution and it is possible to monitor the effective holder of the instrument."*** .

			concept of ‘*connected clients*’ in the definition of ‘*retail deposits*. In order to faithfully transpose what we understand to be the Commission decision, the EBF strongly recommends leaving the current Regulation (EU) 575/2013 unchanged regarding the basis for examining the aggregate deposits of SME. The last part of the amendment (starting with Retail Deposits’ include notes, bonds and other debt securities) was in the EBF Risk Reduction Container 3 July 2017 and in the EP/Econ document and we ask to see it confirmed in CRR2.	
Treatment of deposits by non-financial customers, sovereigns, central banks, multilateral developme nt banks,			A comparison of the requirements for classifying customer deposits for the purpose of determining outflow rates in accordance with the Delegated Regulation on the liquidity coverage ratio (LCR) and the corresponding criteria in the current CRR2 proposal for determining	In our view, this breaks with the otherwise entirely consistent classification of deposits and assignment of corresponding outflow rates and stable funding factors. First, the stable funding factor is only 50% instead of 60% to reflect the 40% outflow rate under the Delegated Regulation on the LCR. Second, the single 50% factor puts liabilities covered by a deposit guarantee scheme at an economically inexplicable disadvantage given that they are likely to be more stable than those not protected by a deposit guarantee scheme. Protected deposits should be assigned a stable funding factor of 80%, in our view, to correspond with the 20% outflow rate in the LCR Delegated Regulation. This distinction is justified since there is no risk of losing the deposits and thus no

public-sector entities in the NSFR - Article 428l(b) CRR2			stable funding factors shows that the two are generally consistent. Take retail deposits, for instance. The Delegated Regulation assigns these an outflow rate of 5% (for deposits with residual maturities of 30 days or less) while CRR2 proposes a stable funding factor of 95% (for deposits with residual maturities of less than one year). The exception to this consistency is the treatment proposed in Article 428l(b) for deposits by non-financial customers, sovereigns, central banks, multilateral development banks, public-sector entities, credit unions authorised by a competent authority, personal investment companies and clients which are deposit brokers. Article 28 of the LCR Delegated Regulation assigns an outflow rate of 40% to deposits by this category of clients with a residual maturity of less than 30 days if the deposits are not covered by a national deposit guarantee	significant economic incentive for depositors to withdraw these funds on a large scale, even beyond the 30-day horizon specified in the Delegated Regulation.

			scheme. If the deposits are covered by a deposit guarantee scheme, the outflow rate is halved to 20%. The proposal for CRR2, by contrast, does not mirror this distinction when assigning a stable funding factor. As a result, all the above deposits with residual maturities of less than one year – regardless of whether or not they are covered by a national deposit protection scheme – receive a stable funding factor of 50% (instead of an analogous 60% and 80%).	
NSFR – Disclosure -CRR Art. 447 & 451a-	The EBF welcomes the refinements provided by the Council compromise on information that should be disclosed by credit institutions on liquidity requirements and on the disclosure of key metrics, as defined in articles 447 and 451a (CRR).			Consider supporting the Council text on this issue.

Remove daily reporting requirement for NSFR **<u>HIGH PRIORITY</u>**	The CRR working draft requires a daily NSFR reporting in case the NSFR might fall below 100% (according article 428b (3) and 414).	As the NSFR is a structural liquidity ratio, its information is based on balance sheet positions which are reported on a monthly basis, banks would be required to calculate balance sheet data not only per month-end but on a daily basis. Such an implementation would require significant IT efforts for banks and the resulting information wouldn´t be relevant. Additionally, for short-term steering measures the LCR has been designed and already has to be reported on a daily basis. Since the LCR includes all positions with maturities up to 30 days, it reflects also all potentially volatile NSFR positions. Positions above 30 days can naturally not expire within one month, and therefore the NSFR will not deteriorate excessively. NSFR effects from these positions longer than 30 days are limited to roll down effects and the resulting lower ASF weights.	We advise that the reference to article 414 in 428b (3) should be removed.

Interest Rate Risk

Issue/Reference	European Council Position	European Parliament Position	EBF Position	EBF Recommendations
IRRBB – Pilar 2R automaticity – -CRD Art. 98(5) & 104a°(2)-	**The EBF considers the amendments of the Council compromise on paragraph 5 of article 98 (CRD) as the best acceptable wording since they clearly waive the automatic capital requirement in case of a breach in the SOT or NII thresholds. Also, the Council compromise on paragraph 2 of Article 104a (CRD) is better formulated as regards to IRRBB P2R.**	**EBF believes the Parliament report allows the ECB to require a capital add-on based on these two measures only (although the SOTs on the EVE and the NII are supposed to be warning indicators with no automatic supervisory action).**	**It is crucial to avoid any ambiguity as for automaticity (the EBF is in favour of total suppression of automaticity).**	Consider supporting the Council text. We **reject any link between a standardized measure and supervisory measures**. Standardized measures like the outlier test cannot accurately reflect interest rate risk. They should continue to serve merely as an indicator to assist supervisors in the identification of institutions with an increased IRRBB. No automatism between supervisory indicators and capital requirements.
Art. 98 (5a)(c) CRD *Additional outlier test*	EBA mandate deleted, NII outlier test established in the legislative text. EBA should only set the details for the test.	EBA mandate for modelling and parametric assumptions for NII and a NII outlier test.	The **BCBS does not set a second outlier test**. We **reject** the proposal to introduce a second outlier test (i.e. as defined in the Parliament report). A second indicator would not enhance clarity on the riskiness of the	Consider supporting the Council compromise. The **BCBS does not set a second outlier test**. We **reject** the proposal to introduce a second outlier test proposed by the Parliament report. A second indicator would not enhance clarity on the riskiness of the institutions business. Economic value and net interest income indicators may result in divergent indication.

			institutions business. Economic value and net interest income indicators may result in divergent indication.	
IRRBB - Modelling and parametric assumptions within the EBA mandate – -CRD Art. 98(5a)(b)-	The EBF considers the amendments of the Council compromise on paragraph (5a) of article 98 (CRD) as the best acceptable wording to define the mandate delivered to the EBA on common modelling and parametric assumptions.		It is crucial to exclude behavioural assumptions from these common parameters (CRD article 98, paragraph 5a(b)) since they depend on various heterogeneous factors across jurisdictions (nature of retail products, client groups, local regulation, business environment, etc.).	Consider supporting the Council text. We **have fundamental concerns regarding excessive standardization** as they might contradict the functioning of pillar 2 (individual methods). According to **BCBS** just a minimum of standardization is required. If standardization was retained, we would plead for a **close involvement** of the industry in case of developing the standards.
IRRBB – Requirement for a standardised methodology – -CRD Art. 84(3)-		The EBF considers the balanced approach of the Parliament report on paragraph 3 of Article 84 (CRD) as an acceptable proposal for the evaluation of internal systems:	If need be, it is important that the competent authority justifies its requirement to use the standardised methodology.	Consider supporting the Parliament text, but advocate for replacing the wording 'non satisfactory' by 'deficient', to be fully in line with the Basel Standards on IRRBB. We find it important that less complex institutions should be stressed by adequately simplified version of a stress test and the methodologies reflects differences in size, complexity and business models. If the existing stress test setup clearly covers the major risks no amendments should be required. The wording 'not satisfactory' should be replaced by the word 'deficient', as the wording 'not satisfactory' leaves more discretionary room for interpretation than the word 'deficient'. Moreover, the probability that an IMS is deemed 'not satisfactory' is higher than the probability that an IMS is deemed deficient and deficient is also the wording that is used in the Basel Standards on IRRBB

IRRBB – Disclosure – -CRR Art. 448-	Paragraph (g) within the Council compromise should be deleted since it refers to behavioural models that are not comparable across jurisdictions (cf. point ii on modelling and parametric assumptions).			We prefer to support the Council text with one exception. The addition of article 448 (1)(g) should not be supported as this is proprietary information. "g) average and longest repricing maturity assigned to non-maturity deposits." This is in line with the EBF's view to support for the Council text regarding CRD article 98 (5a). The text under CRR Article 448(e)(ii) needs to be amended both in the Parliament and the Council version as it is currently referencing six supervisory shocks for EVE as well as NII. This needs to be amended to two supervisory shock scenarios for NII.

Annex - EBF Trilogue analysis and advice on RRM prudential issues

Pillar 2 – Supervisory Review

Issue/Reference	European Council Position	European Parliament Position	EBF Position	EBF Recommendations
Pilar 2 - Supervisory review and evaluation – - CRD Art. 97-	Both the Council and the Parliament have introduced a new paragraph given the possibility for competent authorities to adapt the SREP methodology that may include “benchmarks”.		Such benchmarks are considered as dangerous by the EBF because they could lead to potential problems of interpretation.	The EBF supports Article 97(4a) (CRD) of the Council compromise and the Parliament report only if the reference to benchmarks is removed.
Pillar 2 Guidance – CRD Recital 9 -		We support the EP proposal to introduce a new recital aimed at clarifying that Pillar 2 measures should not conflict with the specific treatments set out in CRR, including those aimed at avoiding unintended impacts on end-users and on the European economy		Consider supporting the Parliament text.
Pilar 2 - Technical criteria for the supervisory review and evaluation – -CRD Art. 98-		The EBF rejects the new Article 98(3a) (CRD) of the Parliament report which gives a too broad definition of shadow banking entities/activities and requires to apply individual limits to exposures to such entities given that the Large exposure framework is sufficient by itself.	The BCBS issued on 27 October 2017 guidelines on the “Identification and management of step-in risk”. European legislators should therefore leverage on this international consensus to further elaborate on its European framework in order to ensure level playing field on that topic.	The EBF asks for the removal of Article 98(3a) (CRD) of the Parliament report

Pilar 2 - Additional own funds requirement -CRD Art. 104a-	Both the Council and the Parliament have introduced two new paragraphs aiming to precise that Pillar 2 requirements (P2R) have to cover risks that are not covered or insufficiently covered by Pillar 1 requirements.		The EBF does not support such approach that gives the National Competent Authority the possibility to use P2R to override transitional or grandfathering arrangements, but also Pillar 1 exemptions and exposures subject to a 0% risk weight under the Pillar 1 framework.	The EBF urges the trilogue partners to amend both Articles 104a(2)(a) and 2(b)) (CRD) of the Council compromise as well as the Parliament report as follows: Council compromise - the following amendment should be inserted at the end of paragraph 2(b): "**Additional own fund requirements to cover the above mentioned risks should not be in conflict with specific treatment set out in Regulation (EU) No 575/2013.**" Parliament report - The following sentence should be modified as such: "For the purposes of the first subparagraph, the capital considered adequate shall cover all material risks or elements of such risks covered or not adequately covered by the own funds requirement. ~~This may include risks or elements of risks that are explicitly excluded from the own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013~~." Parliament report - The following amendment should be inserted in the following way: **Competent authorities shall assess the risks, to which the institution is exposed, taking into account the specific risk profile of each individual institution. Risks or elements of risks referred to in paragraph 1a shall not include risks for which this Directive or Regulation (EU) No 575/2013 provide a transitional treatment, or risks which are subject to grandfathering provisions. Additional own fund requirements to cover the above mentioned risks should not be in conflict with specific treatment set out in Regulation (EU) No 575/2013.**
Pilar 2 - Guidance on additional own funds -CRD Art. 104b-	The EBF supports Article 104b(3) and Article 104b(4) (CRD) of the Council compromise.	Regarding the rationale of the Pillar 2 guidance (P2G) described in Article 104b(1a) (CRD), the EBF supports the wording of the Parliament report.	To conclude on the scope of P2G, the EBF would like to emphasise on the fact that P2G should cover risks that are not covered by P2R in order to take into account forward looking situations as the stress test scenarios. In addition, P2G should not cover macro-prudential risks	Nevertheless, the EBF would like to amend the paragraph 1a of Article 104b in the following way to better circumscribe the definition of P2G: "Pursuant to the strategies and processes referred to in Article 73 and after consulting the competent authority, institutions shall establish an adequate level of own funds that **the competent authority is satisfied by and** 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) **and Article 128**, ~~including to ensure~~ **so** that **the institution's own funds can absorb potential losses identified pursuant to**

			that are already covered by others macro-prudential tools. Last but not least, regarding the mandatory disclosure of P2G, the EBF supports Recital 11 (CRD) of the EU Commission proposal and the Parliament report because the wording inserted in the Council compromise is less clear.	**the supervisory stress test referred to in Article 100 without breaching** ~~either~~, : ~~(a) a minimum fixed level of own funds set by competent authorities, where competent authorities may take into account credible management actions and dynamic adjustments to the balance sheet that may take place over the projection horizon; or~~ [redacted] the own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013 and the additional own funds requirements imposed by the competent authorities in accordance with Article 104(1)(a), **where competent authorities shall take into account credible management actions and dynamic adjustments to the balance sheet that may take place over the projection horizon.**”

Leverage Ratio

Issue/Reference	European Council Position	European Parliament Position	EBF Position	EBF Recommendations
Leverage Ratio and export credit exposures	**Article 429a(1)(f)(ii) Exclusion of guaranteed parts of the exposures arising from export credits from the scope of leverage applies when a 0% risk weight applies to the guaranteed part of the exposure. This was previously restricted to instances where there was a 0% risk weight *and* the loan was funded in the local currency of the country of the ECA. [Article 114(2)]** **However, there is still a level playing field issue with regards to currency exemptions based on article 114(2), as many countries would only be fully exempted from exposures in their local currency: not all EU Member states use the euro as their currency (while more than 0% of export credit exposures are denominated in**	**Article 429a(1)(f)(ii) Exclusion of guaranteed parts of the exposures arising from export credits from the scope of leverage applies when a 0% risk weight applies to the guaranteed part of the exposure. This was previously restricted to instances where there was a 0% risk weight *and* the loan was funded in the local currency of the country of the ECA. [Article 114(2)]** **However, there is still a level playing field issue with regards to currency exemptions based on article 114(2), as many countries would only be fully exempted from exposures in their local currency: not all EU Member states use the euro as their currency (while more than 0% of export credit exposures are denominated in dollars) so they would not be exempted from intra-EU & OECD exposures.**	**The EBF supports the achieved CRR Leverage Ratio compromise, understanding that the inclusion of the possibility of ECA exposures to be ruled out by means of Article 114(2) amends the original Commission proposal in such a way that not only exposures guaranteed in the currency of the specific Member State in where the ECA is based would be excluded in case they comply with the characteristics laid down in the article.** **We support the Parliament position which includes the expanded exclusion of guaranteed parts of exposures arising from export credits from the scope of leverage ratio when a 0% risk weight applies to the guaranteed part of the exposure as per the Council's text, but also expands the exclusion of guarantees to all**	**We support a full exemption of all EU & OECD ECA exposures from the application of the leverage ratio, irrespective of the rating of the country to which the ECA belongs and the currency of denomination of the exposure, thus not bound by the credit risk steps as laid down in article 114(2).**

	dollars) so they would not be exempted from intra-EU & OECD exposures.		**eligible unfunded credit protection providers.** **However, we strive for the full exemption of all OECD ECA exposures from the application of the leverage ratio, so our main concern with the current state of the amendments after the inclusion of article 114(2), is that the weight attributed to ECA-covered exposures for the purpose of leverage ratio calculation would vary depending on the affected ECA and sovereign credit rating. This would prove to be a real challenge for both ECAs and Banks business in the EU, as the lack of a level playing field within EU countries would generate disadvantages for exporters from different EU countries when pitching on the same transaction denominated in US Dollars.** **Banks' internal models would also have to be adapted to change the valuation of the leverage ratio of the exposure in function of the currency of the transaction and the rating of the country where the ECA is located, thus providing a**	

			drop of predictability in case of rating changes. With each rating change of a certain country, the weight attributed to exposure backed by the ECA of that country would be instantly affected, potentially determining extra costs for a core business that would bring many benefits to the real economy.	
Leverage ratio - G-SII additional leverage buffer -CRR Art. 92-	The Council proposal goes in the right direction, but the words 'maintain' and 'buffer requirement' can be read as the G-SII leverage buffer to be maintained even post stress: "(d) a leverage ratio of 3%.". (a)(bis) the following new paragraph 1a is inserted after paragraph 1: " 1a. In addition to the requirement set out in point (d) of Article 92(1), a G-SII shall maintain a leverage ratio buffer requirement equal to 50% of the G-SII buffer as defined in point (3) of Article 128 of Directive	The European Parliament proposal can be read as the final requirement for G-SIIs to be sum of the 3% minimum requirement plus the G-SII requirement set as RWA based 50% G-SII buffer: "(d) a leverage ratio of 3%; (da) by derogation from point (d), each G-SII shall add 50% of the G-SII buffer calculated in accordance with Article 131(4) of Directive 2013/36/EU to the 3% leverage requirement."	It is essential that EU rules are aligned with the Basel III standards, i.e. 3% minimum requirements + leverage buffer calculated as 50% of a G-SII's higher-loss absorbency risk-weighted requirements. It is key to clarify that the G-SII additional leverage surcharge will be a buffer and not a requirement; indeed, this clarification will enable that the requirement post stress exercises will be at 3%, as it is the case in the United States. In addition, it should consist of Tier 1 capital, and also be applied at consolidated level only.	For all those reasons, the EBF would propose the following changes on Article 92(1)(da) based on Council proposal: "In addition to the requirement set out in point (d) of Article 92(1), a G-SII, **on a consolidated basis**, shall ~~maintain~~ **have** a leverage ratio buffer ~~requirement~~ equal to 50% of the G-SII buffer as defined in point (3) of Article 128 of Directive 2013/36/EU. A G-SII shall meet the leverage ratio buffer ~~requirement~~ with Tier 1 capital only."

	2013/36/EU. A G-SII shall meet the leverage ratio buffer requirement with Tier 1 capital only."			
Leverage ratio - Nature of the numerator -CRR Art. 429-	The EBF supports Article 429(3) (CRR) of the Council compromise which proposes the numerator as Tier 1.	The Parliament report introduces an additional constraint by imposing at least 50% of CET1 capital in the numerator of the leverage ratio, which is not consistent with the Basel III final standards.		The EBF supports Article 429(3) (CRR) of the Council compromise.
Leverage ratio - Exposures excluded from the exposure measure -CRR Art. 429-		The EBF welcomes the introduction of the new paragraphs 4a to 4d in Article 429 (CRR) of the Parliament report given the possibility to exclude from the leverage exposure measure exposures to central banks under certain conditions.	**We support the EP proposal to allow the exclusion of the central bank deposits from the exposure measure, though we believe this should not be limited to in 'exceptional circumstances'.** Nevertheless, the conditions laid down in paragraphs 4b and 4c of the Parliament text are so constraining that such exemption could be inapplicable. To that end, the EBF would like to ease the conditions of exemption, highlighting on the huge impact for the credit institutions and the financing of the real economy.	Consider supporting the European Parliament text.

			Should the conditions of exemption not be eased, the EBF would appreciate to have further explanations as regards the content of paragraph 4d for the purpose of the operational implementation.	
Leverage ratio - Exposures excluded from the exposure measure -CRR Art. 429-(1)	The EBF fully supports Article 429a(1) introductory part of the Council compromise because it extends the scope of exclusion contrary to the proposals made by the Commission and the Parliament.			Support the Council text for the introductory part of Article 429a(1).
Leverage ratio - Calculation of the exposure value of assets / SFT settlement system issue – -CRR Art. 429b-	Regarding Article 429b(5), the Commission legislative proposal and the Council compromise have both retained the notion of “settlement system” which differs from the current wording of the CRR (“settlement mechanism”).	The EBF fully supports the amendment introduces in Article 429b(5) of the Parliament report (“or settlement systems using a common settlement infrastructure”).	This Council and Commission texts raises concerns because the settlement through Target 2 Securities (T2S) would not benefit from balance sheet netting as T2S does not qualify as a “system”.	Consider supporting the Parliament text.

Leverage ratio - Calculation of the exposure value of derivatives -CRR Art. 429c-	Regarding Article 429c(5) proposed by the Commission, the Council and the Parliament, the value of the multiplier is set at 1.		This, means that any review of the SA-CCR methodology could not impact the exposure measure calculation in the leverage ratio.	The EBF would like to remove the application of the alpha factor to the replacement cost in Article 429c(1) of the Council compromise and the Parliament report in order to have a consistent approach to on-balance components with other exposure types and not to be inconsistent with a non-risk balance sheet driven exposure amount.
Leverage ratio - Disclosure and reporting of the leverage ratio -CRR 429ga & 451- ***<u>HIGH PRIORITY</u>***		**The EU Parliament has introduced a new Article 429ga related to the calculation method of the leverage exposure for the purposes of reporting and disclosure for large institutions as an average of daily positions (except for derivatives, SFTs add-on and sales awaiting settlement to be taken into account a month-end basis).** **In addition the EBF rejects the new paragraph 2a introduced by the Parliament in Article 451. On the one hand, should credit institutions be required to disclosure their leverage ratio with and without exposures to**	**The EP proposed requirement will lead to heavy administrative burden, as the current practice in Europe is to calculate the Leverage ratio on a quarter-end position. In addition, this change will lead to a disadvantage for European banks that permitted them to remain so far competitive vis a vis US competitors. Indeed, even if US banks are required to calculate their exposure as an average of daily positions (except for off balance sheet, derivatives PFE, SFTs add-on), EU credit institutions have on their side to comply with solo requirements contrary to their US peers**	**Reject the EP proposal.**

		central banks, they would lose the benefit of such an exemption because the disclosure would remain the new market reference. On the other hand, the information related to amount of assets used in central bank facilities is sensitive and may be viewed as confidential.	**and do not benefit from public and private securitisations to downsize their balance sheet. Consequently, the EBF rejects Article 429ga of the Parliament report.**	
Leverage ratio - Entry into force and date of application – -CRR Art. 3-	The EBF fully supports Article 3 of the Council compromise because it does not require an entry into force of the 3% leverage ratio from 1 January 2019 (but two years after date of entry into force) and because it aligns the G-SII leverage ratio buffer application date with BCBS (from 1 January 2022).	EP proposes January 2020	Council proposal would be in line with date of application for modifications of the LR-exposure, new calculation methods for derivatives etc.	Support the Council proposal.

Large Exposures

Issue/Reference	European Council Position	European Parliament Position	EBF Position	EBF Recommendations
Large exposure - Calculation of derivatives' exposure value – -CRR Art. 390-	The amendments to paragraph 4 art 390 introduced by the Parliament report and the Council compromise should be clarified since they specify the calculation of SFTs' exposures in an article dedicated to derivatives.		When calculating an exposure there should be as far as possible consistency between capital and large exposure regime. The IMM is permitted for some products for the purpose of risk weighted assets. In that context comprehensive approval process takes place. Insofar the IMM should be applicable for the purpose of calculating exposures in the large exposure regime. Moreover, the US finalised their version of the Large Exposure framework in June 2018. In the final US rule (called Single Counterparty Credit Limit) **US banks can continue to use internal models to measure the exposure to derivatives**. The standardized approach (SA-CCR) will not be mandatory (Rules text: https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180614a1.pdf).	To ensure that the EU is not put at a competitive disadvantage to the US, the EBF would like to amend the proposal paragraph 4 of article 390 of the Parliament report and the Council compromise in the following way: "By derogation from the first sub-paragraph, institutions with a permission to use the methods referred to in Part Three, Title II, Chapter 4, Section 4, and Chapter 6, Section 6, may use these methods for calculating the exposure value for **derivatives and** securities financing transactions".

Large exposure - Calculating the effect of the use of credit risk mitigation techniques – -CRR Art. 401-			Institution should be allowed to use own estimates of the effects of financial collateral in relation to Securities Financing Transactions, to stay consistent with the treatment allowed in credit risk.	EBF support the amendment to paragraph 2 art 401 introduced by both the Parliament report and the Council compromise.
Large exposure - Substitution approach – -CRR Art. 400 & 403-	The EBF supports the proposals of European Parliament and the Council compromise with regard to exposures in the form of a guarantee for officially supported export credit and exposures in the form of a collateral or a guarantee for residential loans. However, the EBF is of the view that an “exemption” is more appropriate than a “derogation”. Therefore, the EBF supports the Council proposal to amend art 400(2) by introducing paragraphs (k) and (l). Nevertheless, since the Council defines precise and objective criteria, those paragraphs should be moved to art 400(1).		Besides that, applying the mandatory substitution approach would ignore the principle introduced by the Basel Committee with the Basel II comprehensive approach for the usage of financial collateral where it is recognised as credit risk mitigant, not because of the credit quality of the issuer but because of the liquidity of the financial instrument. The concept behind the substitution approach is to assimilate a financial collateral to an unfunded credit protection provided by the issuer, which does not reflect the reality of the risk taken by the institution (in case of default of the counterparty, the bank liquidates the collateral but will not keep the collateral,	The EBF would like to amend the article 403 of the Parliament report and the Council compromise in the following way: “Where an exposure to a client is guaranteed by a third party or secured by collateral issued by a third party, an institution ~~shall~~ **may**:” We also ask for an alteration from shall to may in Art. 401 (4). *401 (4): “Where an institution reduces an exposure to a client due to an eligible credit risk mitigation technique in accordance with Article 399(1), it* ***may*** *~~shall~~, in the manner set out in Article 403 (inserted by EP/Council), treat the part of the exposure by which the exposure to the client has been reduced as having been incurred to the protection provider rather than to the client."*

			expecting its repayment by the issuer at maturity). Moreover, the substitution approach will raise operational issues for tri-party repo where the identification of the issuer is problematic.	
Large exposure - Exclusion of intragroup transactions – -CRR Art. 400-	The EBF welcomes the proposals of European Parliament and the Council compromise to include “the qualifying holdings” in the scope of intragroup transactions and holdings under art 400.		However, a legislative change is required to remove the conflicting powers afforded to Member States and Competent Authorities, as well as to enhance the ability of the SSM to exercise its powers as the common supervisory authority of the Banking Union.	The EBF therefore recommends that the discretion set out in Article 400(2)(c) of the CRR be moved to Article 400 (1) as (m)new so that, where a firm’s intragroup counterparty is subject to the same conditions as those listed above (i.e. equivalent prudential requirements, included in the same consolidation with the same levels of risk and control and with no impediments to the transfer of funds), intragroup exposures must be fully and consistently excluded from large exposure limits. Exemption in Article 400 (1) (f) should also be granted to exposures to counterparties that are eligible for the purpose of Article 113(6) in every respect, except for point d) (i.e. counterparty located in the same Member State as the institution).
Large exposures – exemptions – CRR Art. 507 **HIGH PRIORITY**	The Commission proposal mandates the EBA to monitor the use of exemptions from the large exposures limits, set out in Article 390 (6), 400 (1) and 400(2), and to report to the Commission about the impact of their possible removal or restriction. The exemptions set out in Article 400 (1) and 400 (2) include, among others, sovereign exposures. The Council confirms this mandate.	In the Parliament text the mandate is limited to the exemptions set out in Article 390 (6).	The mandate to EBA might be read as a premise for a future removal or limitation of the exemptions identified. Putting into question the sovereign exemption from the large exposures limits would deeply impact both banks and the markets of government debt instruments, and should therefore be avoided.	The EBF strongly supports the Parliament text.

Pillar 3 - Disclosure

Issue/Reference	European Council Position	European Parliament Position	EBF Position	EBF Recommendations
IFRS16 - Prudential impacts -	**The EBF is disappointed that no proposal has been made by the EU Council and the EU Parliament to take into account the entry into force of IFRS16 from 1 January 2019.**		**Indeed, this accounting standard introduces fundamental changes in accounting for operating lease contracts on lessee`s balance sheet as it no longer differentiates between operating and finance lease and requires to recognise all on-balance as Right of Use Assets.**	**Amendments in the CRR proposal would enable an adequate treatment of leases for own funds requirements, leverage ratio and NSFR.**
Pilar 3 & Disclosure - Disclosure of own funds requirements and risk weighted exposure amounts – -CRR Art. 438-	As regards paragraph (b) of Article 438 related to the composition of the capital based on SREP outcomes, the EBF supports the proposal inserted in the Council compromise.		Considering the ongoing discussion of the Basel Committee on the Output floor, it is obvious that the CRR-CRD IV review should restrain from anticipating proposals which are still being considered by the Basel Committee. In addition, the proposal may oblige banks to explain the way the output floor will apply and constitute an obstacle against internal models. The disclosure requirements which are being proposed in relation to holdings in insurance undertakings would defeat the purpose of Article	Concerning the application of capital floors described in paragraph (d) of Article 438, the EBF rejects all the proposals made by the EU Commission, the EU Council and the EU Parliament. Regarding the disclosure requirements arising from the Danish Compromise, the EBF rejects all the proposals made by the EU Commission, the EU Council and the EU Parliament in paragraph (f) of Article 438. EBF welcomes the removal of paragraph (i) of Article 438 proposed by the EU Council and the EU Parliament related to hypothetical risk-weighted exposure amounts.

			49(1) of the CRR and the associated exemption decisions made by competent authorities.	
Pilar 3 & Disclosure - Disclosure of operational risk management – -CRR Art. 446-	The EBF supports Article 446 of the Council compromise because the disclosure requirement of quantitative data in relation to the future Standardised Measurement Approach in operational risk has been removed.			Support Council proposal
Disclosure on a consolidated basis and TLAC -CRR art. 3(2), 13, 434a and 437a-	The Council report is aligned with the Commission proposal (i.e. entry into force in 2019)	The Parliament report propose to postpone the requirement to 1 January 2020	The EBF proposes to align disclosure requirements for own funds and eligible liabilities with TLAC requirements and to postpone disclosure requirements defined in article 13 (CRR) after the definition of standardized disclosure requirements (please see the mandate confided to EBA in Article 434a (CRR)).	The EBF proposes the following adjustment to Article 3(2) (CRR): *"2. This Regulation shall apply from [two years after date of entry into force], with the following exceptions:* *(a) the provisions on the introduction of the new requirements for own funds and eligible liabilities in points (4)(b), (7), (8) ~~to (9)~~, and (12) to (38) and (40), which shall apply from 1 January 2019;* ***(aa) the provisions on the introduction of disclosure requirements for own funds and eligible liabilities in Article 437a, which shall apply from 1 January 2019;**"*

Non performing loans

Issue/Reference	European Council Position	European Parliament Position	EBF Position	EBF Recommendations
Massive disposals – CRR Art 144 h (new) ***<u>Priority Issue</u>***		Article 4 - paragraph 1 point 144 h (new) (144h) "massive disposals" means the ones implemented by institutions in the context of a multi-year program which aim to materially reduce the amount of defaulted exposures in their balance sheets and which has been previously notified by institutions to their competent authority. They shall cover at least 15% of all observed defaults in the sense of Article 181(1)(a) during the program implementation period.".	We support the position of the Parliament which allows institutions to adjust their credit risk parameters (LGD estimates) by disregarding totally or partially the losses due to massive NPLs disposals. It is important not to underestimate the range of potential massive disposal that might be of interest of many banks. In order to clarify the perimeter of massive disposals, a compromise text is proposed in the next column.	Article 4 - paragraph 1 point 144 h (new) (144h) "massive disposals" in respect to article 181 means disposals implemented by institutions in the context of a multi-year program which aim to materially reduce the amount of defaulted exposures in their balance sheets and which has been previously notified by institutions to their competent authority. They shall cover at least 15% of all observed defaults in the sense of Article 181(1)(a) during the program implementation period. **Circumstances in which a bank implements a massive disposal include material changes (also related to banking sector consolidation processes) in its credit/business strategies or in its monitoring/recovery strategies.**

Annex - EBF Trilogue analysis and advice on RRM prudential issues

Treatment of Software

Issue/Reference	European Council Position	European Parliament Position	EBF Position	EBF Recommendations
Remove the deduction of software from banks' regulatory capital -CRR Art 36 and 134 **HIGH PRIORITY**	NA	**The EU Parliament position refers to the prudential treatment of software which should be supported.** **The amendment proposes to exempt software from being deducted from CET1which should be fully supported. However, it also proposes that EBA develops, within 6 months, draft regulatory technical standards to specify the term 'software' and the circumstances where a non-deduction of software from CET1 items would be justified from a prudential perspective taking into account:** **i) the evolution of the banking sector in an even more digital environment and the opportunities and threats which banks are facing in the era of digitalisation;** **ii) the international differences in the regulatory treatment of investments in software where software is not deducted from capital (e.g. treated as tangible asset) as well as the different**	**The digital reality, the new competitive environment, the cyber security threats and the new regulatory framework entail indeed an increase of banks' investments in software.** **The European application of the Basel III standards implies that software investments should be fully deducted from bank's CET1 creates competitive disadvantages and an uneven playing field to the detriment of European banks which have to deduct their whole investments in software compare to emerging technological players and banks from other jurisdictions, such as US institutions where software is not considered as an intangible asset.** **Software characteristics justify a prudential treatment not fully deducted from CET1 but risk weighted like other assets. Altogether, the removal of capital deduction**	**The EBF fully supports an amendment to CRR to exempt software from being deducted from CET1 (SW should be risk weighted at 100%). In this sense, the EBF supports the EP amendment amending article 36.** **Consequently the Article 134 of the current CRR (other items) should be amended in order to be aligned with the EP amendment to article 36:** *"Tangible assets within the meaning of item 10 under the heading 'Assets' in Article 4 of Directive 86/635/EEC and **the software that shall not be deducted in accordance with article 36(1)(b)** shall be assigned a risk weight of 100 %."*

		prudential rules that apply to banks and insurance companies and **iii) the diversity of the financial sector in the Union including non-regulated entities such as FinTechs;**	**would result in a framework where banks, instead of deducting from capital upfront 100% of their software investments, would deduct them progressively following the depreciation profile, with an additional capital charge based on a 100% RW which would add some conservatism. This adjustment would promote the digital transformation of the banking sector, aligning the rules with other technological and international players.**	

Making regulation and supervision fit for purpose and avoiding unnecessary burden for banks.

Issue/Reference	European Council Position	European Parliament Position	EBF Position	EBF Recommendations
P2G should have the same treatment as P2R in terms of the calculation of minority interest (articles 84, 85 and 87 CRR).			P2G is a supervisory expectation that must be met at all time, and therefore, in terms of the calculation of minority interest, P2G should have the same treatment as P2R. In this sense, we propose that both components of Pillar 2 should be reflected in the surplus capital calculation for the amount of determining minority interests to be included in the consolidated CET1 capital.	Insertion of two new paragraphs: The excess capital should be calculated on the basis of the regulatory and supervisory requirements and any supervisory expectation independent on the form it's required (formal requirement, informal requirement, guideline...). Also ICAAP and stress test exercises form part of the supervisory expectations and they should be considered in the excess capital calculation.

Annex - EBF Trilogue analysis and advice on RRM prudential issues

Capital instruments

Issue/Reference	European Council Position	European Parliament Position	EBF Position	EBF Recommendations
Allow qualifying as consolidated own funds minority interests and AT1 and T2 issued by subsidiaries established as Intermediate Holding Companies (IHCs) in third countries	***Recognition of issuances through holdings in third countries.***	***Recognition of issuances through holdings in third countries.***	the requirement for IHC to be subject to "the same rules" as credit institutions stablished in the proposal[1] might lead to interpretation difficulties. Added to that, it seems difficult that all rules applying to credit institutions match exactly with those applicable for holding companies. In order to avoid a miss-interpretation of the proposal, we believe art. 81 and 82 could be rephrased so as to make reference to "prudential requirements as stringent as those applied to credit institutions in that third country" instead of "the same rules".	Support parliament and Council proposals. Both the Parliament and the Council text reflect well our concerns and the amendments we worked on.

Annex - EBF Trilogue analysis and advice on RRM prudential issues

Remuneration

Issue/Reference	European Council Position	European Parliament Position	EBF Position	EBF Recommendations
Staff Remuneration caps in the context of the digital banking *Proposal for a NEW ARTICLE*	The rules as currently drafted affect digital specialists who do not perform risk taking (including operational risk) activities but are critical for the digital transformation of banks. In particular digital specialists could qualify as "identified staff" due to being in charge of "significant business units" in accordance with the Delegated Regulation on identification of staff.		In the new digital environment, it is necessary to ensure a level playing field between players where they perform the same activities, but non-bank entities are not subject to the CRR/ CRD IV. Digitally skilled employees are scarce and constitute an essential part of business strategy for digital transformation. The dynamics on the innovative environment are driven by entrepreneurship. These entrepreneurs are typically the owners of their companies so their remuneration is equity based. In case a bank needs to attract them, they need to change the remuneration profile in a radical manner that is not adjusted to the Fintech environment. This is acting as a barrier for them to join a banking entity compared to other type of environment. The existing regulatory requirements on remuneration (deferral,	By way of solution, it would be appropriate to exclude digital transformation profiles from the application of the remuneration requirements.

			payment in instruments, cap on the ratio of Variable/Fixed compensation) will hamper the banks' ability to attract digital talent from the non-banking marketplace which is not subject to the same requirements. This will act as a competitive disadvantage for banks.	
Aligning remuneration policies and practices with effective risk management	The exclusion criteria proposed by the Commission state the following : "an institution that is not a large institution as defined in point (1) of Article 430a of Regulation (EU) No 575/2013 and the value of the assets of which is on average and on an individual or, where applicable, on a consolidated basis in accordance with this Directive and Regulation (EU) No 575/2013 equal to or less than EUR 5 billion over the four-year period immediately preceding the current financial year;" It would be appropriate to exclude the entities subject to sectoral regulations out of the	The exclusion criteria proposed by the EP state the following: "an institution on an individual basis, which may also be subject to prudential consolidation or part of a banking group, the value of the assets of which is on average equal to or less than EUR 8 billion over the four-year period immediately preceding the current financial year".	We agree with the wording proposed by the EP since it excludes from the calculation of assets any assets held entities that are regulated under AIFMD/UCITS or any specific sectoral regulation (Solvency II) and that are part of the same group as an institution. Moreover, we believe that putting in place an absolute exemption threshold for entities across the EEA at 5bn does not take into account the specificities of each country's market and we agree with the amount proposed by the EP (i.e. €8bn on an individual basis).	It would be advisable to leave some discretion to the national competent authority which might review the national exemption threshold upwards (or downwards, for some countries) if considered appropriate in that particular market. Regarding the individual threshold for disapplying the remuneration requirements to low remuneration, we believe lowering the thresholds and creating a threshold based on a percentage of the variable on the total annual remuneration would add an important administrative burden and additional costs, disproportionate to the expected improvement of risk management. We consider that the level of the absolute threshold proposed by the Commission of €50.000 is low compared to current applicable levels in many Member States including key countries for the European financial sector - such as UK, France and Luxembourg for example where the level is around €100.000. Considering the great disparities of cost of living between countries and compensation practices, a low threshold would impact even more employees in a country were level of compensation are high. It would be appropriate, similarly to the entity threshold above, to leave some discretion to the national competent authorities which might review the threshold upwards if relevant for a specific market.

	scope of CRD, if they are part of a banking group.			
Gender neutral remuneration policy -CRD Art. 92-	Council of the EU proposes to completely amend the current formulation of the article to a supporting factor that is not bound by any specific number, as the calculation would be adjusted to the different exposures.	In art. 92 (2) (ba) in paragraph 2, the following point is inserted: "(aa) the remuneration policy is gender neutral: female and male workers will be equally remunerated for equal work or work of equal value." (bb) The following paragraph is inserted: "(2a) Paragraph 2 of this Article and Articles 94 and 95 shall be without prejudice to the full exercise of fundamental rights guaranteed by Article 153(5) TFEU, general principles of national contract and labour law, Union and national law regarding shareholders' rights and involvement and the general responsibilities of the management bodies of the institution concerned, and the rights, where applicable, of the social partners to conclude and enforce collective	It has no link with the objective of the CRD which is to reinforce the alignment of the remuneration policies and practices with effective risk management. 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. We support the EP amendment which raises the threshold to EUR 3,000,000.	The EBF supports Article 92 (CRD) of the EU Commission proposal. Indeed, in the Parliament report, EBF does not support the gender-neutral policy which has nothing to do with prudential requirements and should not be treated in the CRD. In addition, the EBF does not support the Council proposal to add paragraph 3 on categories of staff whose professional activities have a material impact on the institution's risk profile, because the EC delegated regulation 604/2014 already defines precisely the criteria for the identification of these categories of staff and this inclusion will only lead to additional confusion and complexity in the definition of staff subject to the remuneration requirements. Cancel all provisions about gender in CRR and CRD. We support maintaining the current formulation of the text with the extension to EUR 3,000,000 in the formula as proposed in the EP version.

		agreements, in accordance with national law and customs." European Parliament proposes to calculate Risk weighted exposures to SMEs with a formula that expands the Commission original proposal from EUR 1,500,000 to 3,000,000		
Derogation from remuneratio n rules of deferral and payment in instruments – CRD Article 94(3)	b) a staff member whose annual variable remuneration does not exceed EUR 50.000 and does not represent more than one third of that staff member's total annual total remuneration. For the purposes of this point Member States may modify the thresholds referred to herein taking into account the particularities of the remuneration practices in the relevant national market and the responsibilities and job profile of those staff members.	(b) a staff member whose annual variable remuneration does not exceed EUR 50.000 and does not represent more than one fourth of the staff member's annual total remuneration.		We support Council proposal but increasing the floor from 50k to 100k euros.

Scope of proportionality principle – CRD Recital 5	Recital 5: (…) they should be allowed to exempt at a minimum small and non-complex institutions and staff members with low levels of remuneration from, at least, deferral and pay out in instruments requirements entirely. (16) Article 94 is amended as follows: 3.By way of derogation from paragraph 1, the requirements set out in points (l), (m) and in the second subparagraph of point (o) shall, at a minimum, not apply to:	Recital 5: (…) it is necessary to exempt in the Directive small and non-complex institutions and staff members with low levels of remuneration from the principles on deferral and pay out in instruments. (16) Article 94 is amended as follows: 3.By way of derogation from paragraph 1, the principles set out in points (l), (m) and in the second subparagraph of point (o) shall not apply to:	We do not agree with the wording proposed by the EP since it is less flexible and does not take into account the particularities of the remuneration practices in the relevant national market.	We recommend keeping the EC wording or, alternatively, harmonising the application of proportionality principles throughout sectoral specific regulation. As such, we note that under ESMA guidelines on remuneration under AIFMD, AIFMs are also allowed to dissaply the ex post incorporation of risk for variable remuneration (corresponding to point (n) of paragraph 1 of Article 94 of CRD) and the requirement to establish a remuneration committee (corresponding to Article 95 of CRD). At least these two principles should therefore be added to the list of principles that can be dissaplied under CRD.
Remuneration - Variable elements of remuneration – -CRD Art.94-	The EBF supports Article 94 (CRD) of the Council compromise because it allows Member States to have flexibility to adapt the level of individual remuneration and entity size thresholds level according to the local living standards and local banking market.	We strongly reject Parliament proposal to defer the variable remuneration of material risk takers over a period which is not less than 5 years.	Indeed, the annual earnings and cost of living and the maturity and weight of the financial sector are very different across European countries. Consequently, it would be more consistent to keep the ability for Member States to set lower thresholds aligned with the local market cost-of-living and characteristics of the financial sector. However, we regret that there still remains an ambiguity as to whether the subsidiaries of large banking	We consider that maintaining the current flexibility (i.e. period of deferral from 3 to 5 years minimum and the deferral correctly aligned with the nature of business, its risks and the activities of the member of staff in question) is necessary, including for senior management and high earners, due to the present context of transformation of the banking sector.

			groups should be regarded as large institutions as defined in point (1) of Article 430a of Regulation (EU) No 575/2013.	
Remuneration - Institutions' arrangements, processes and mechanisms – -CRD Art. 109-		The EBF supports Article 109 (CRD) as amended by the EP which correctly addresses the issue of potential conflicts between the CRD remuneration policy and other specific sectorial remuneration requirements, both for EU based entities and third country-based entities.		Support the EP ECON Compromise text.
Consolidated application of remuneration rules	(25a) In Article 109, the following paragraph 4 is added: 4. The remuneration requirements laid down in Articles 92, 94 and 95 shall not apply on a consolidated basis to either of the following: (a) subsidiary undertakings established in the Union where those are subject to specific remuneration requirements in accordance with other instruments of Union law; (b) subsidiary undertakings established in a third country where these would be subject to	25) In Article 109, paragraphs 2 and 3 are replaced by the following "(…) Subsidiary undertakings, not themselves subject to this Directive, shall comply with their sector specific requirements on solo level." 3a. For the purpose of paragraph 2, EBA shall in consultation with ESMA develop draft regulatory standards with respect to the practical aspects of the application of the remuneration rules under this Directive to subsidiary undertakings, not	We support EP ECON proposal. The remuneration requirements shall not apply on a consolidated basis to a subsidiary undertakings not subject to CRD. The EP proposal also has the merit to clarify that in case of conflict of legislation for group risk takers, specific sector legislation shall prevail. We encourage the possibility to free up resources to support infrastructure financing, crucial to revamp the economy. We deem however that the list of eligibility criteria is too restrictive, thus limiting the	We would like to add another exemption for subsidiaries that are subject to CRD that would: "subsidiary undertakings developing technology-enabled innovation in financial services that could result in…" For the purpose of this exemption, EBA should be empowered to develop draft regulatory standards specifying the type of entities that would fall within this fintech category.

	specific remuneration requirements in accordance with other instruments of Union law if they were established in the Union". Maintains wording from the Commission	themselves subject to this Directive. Taking into account the institutions' size, internal organisation and the nature, the scope and the complexity of their activities as well as that the specific sector legislation shall prevail where specific requirements of this Directive may conflict with the sectorial requirements, these draft regulatory standards shall specify the qualitative and appropriate quantitative criteria to identify categories of group risk takers as well as the classes of instruments which reflect the group's risk profile. In this context, EBA shall assess in consultation with ESMA, and amend if necessary, the existing regulatory technical standards on criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile under Article 92 paragraph 2 of this Directive.	qualifying projects. Therefore, we support amendments aiming at maximizing the effectiveness of the supporting factor.	

		Power is delegated to the Commission to adopt the regulatory technical standards referred to in this paragraph in accordance with Article 10 to 14 of Regulation (EU) No 1093/2010. "Includes some provisions that allow more freedom for lenders.		

Supporting finance and infrastructure

Issue/Reference	European Council Position	European Parliament Position	EBF Position	EBF Recommendations
Maintain and extend the SME Supporting Factor (SF)	**Council of the EU proposes to completely amend the current formulation of the article to a supporting factor that is not bound by any specific number, as the calculation would be adjusted to the different exposures.**	**European Parliament proposes to calculate Risk weighted exposures to SMEs with a formula that expands the Commission original proposal from EUR 1,500,000 to 3,000,000**	**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. We support the EP amendment which raises the threshold to EUR 3,000,000.**	**We support the Parliament position, as this will allow to reduce the capital requirements not only for small and micro businesses, but also for medium enterprises that in several jurisdictions are the real driving force of EU economy.**
Green Supporting Factor	**Does not consider the possibility of assessing its inclusion.**	**The EBA, after consulting Calls for 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 possibility of 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**	**The review of the CRR is a timely opportunity to explore and test the merits of a green supporting factor that would recognise the beneficial nature of such assets for the energy transition and the decarbonisation of banks' balance sheets. EBF therefore welcomes the proposal of the parliament with regards to the EBA tackling this work, and we would like to see an agreement with the Council in this regard. However, we understand that the position could be improved, as**	**Parliament and Council should agree to adopt a common position that ensures the EBA is the authority tackling the work regarding the prudential treatment of assets exposed to sustainable activities, while we strongly advocate to change the timeline for implementation to a more pressing one, that would match the sense of urgency that sustainability brings to the table. This new timeline should not compromise the collection of all necessary data to ensure a well-documented and high-quality results when assessing the assets. Both the development of the taxonomy for sustainable investments, and in parallel, further research on the implications of a Green Supporting Factor and its calibration are critical to ensure a proper understanding of the impact the financial sector and, in particular, banks will have in financing a sustainable future. In this sense, we would like to propose that the European Council supports the proposal of the European Parliament, thus allowing a balanced approach regarding the Green Supporting Factor. One that it is cautious enough to understand the impacts it can have for**

		options for assessing exposures of asset classes to activities associated substantially with environmental and/or social objectives; **i. specific methodology to assess exposures to sustainable assets/activities;** **ii. risk profiles of assets exposed to sustainable 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. potential effects of a dedicated prudential treatment of assets exposed to sustainable activities which are associated substantially with environmental and/or social objectives on financial stability**	**timeline to be followed could be shorter, understanding that such a research by the EBA needs time to build up the necessary facts, and taking into account the political timeline, the impact on the banking sector would not be felt until several years pass, and understanding the urgency of tackling sustainability concerns this is not the most appropriate timeframe.**	**financing the economy, while setting it into a flexible wording that permits further revision and calibration when evidence arises. We would just like to remark that time is of the essence and a more pressing timeframe would be very much welcomed.**

		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.".**		
Credit risk – infrastructure financing - assessment of the environmental and social impact -CRR Art. 501a(1)(ba)-		The EBF supports the amendment brought by the Parliament report on paragraph (1)(ba) of article 501a.	Many institutions already apply Equator Principles (EPs) and other systems of assessing environmental and social impacts to new projects.	Nevertheless, the following adjustment should be considered: "**<u>Regarding new projects to be built, an assessment (as per internal lenders' review)</u>** whether the exposure delivers **<u>globally</u>** a positive environmentally and socially sustainable impact, such as the sustainability objectives as laid out Article 9 paragraph 2 of Regulation (EU) 2015/1017, is conducted and risks potentially identified in the report referred to in Article 501(da) are taken into account;"
Credit risk – infrastructure financing - Revenue of the obligor -CRR Art. 501a(1)(g)(i) -		The EBF supports the amendment brought by the Parliament report on paragraph (1)(g)(i) of article 501a stating that revenues may be funded directly or indirectly by a large number of users.	The sale of electricity for example, can be to a large number of users, through a trading company which sells to distributors, which themselves sell to end users.	However, the EBF would like to amend the proposal paragraph (1)(g)(i) of article 501a of the Parliament report in the following way: "the contractual arrangements provide lenders with a high degree of protection including the following: (i) where the revenues of the obligor are not funded **<u>directly or indirectly</u>** by a large number of users, **<u>or unless the entity is replaceable without a significant change in the level and timing of revenues</u>**; 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"

				Requesting termination amounts covering debt amount in case of termination of the offtake contract would exclude the majority of projects which benefit from offtake contracts. In case of termination of the offtake contract, as long as the good or service can be sold on an existing spot market or other possible off-takers (counterparties of a sale contract) the project should be considered as eligible to 501a, even though there is no termination amount. Generally, when the project is located in a region where there is no real spot market, termination indemnities are included in the offtake contract, like in the Middle East for example. If not included, it is because the project could find another off-taker or sell on the spot market, getting also an indemnity for the offtake contract termination in court, such indemnity completing market revenues.
Credit risk – infrastructure financing - Obligor additional indebtedness -CRR 501a(1)(g)(vii)-	The EBF considers that none of the Council compromise and the Parliament report are satisfactory regarding debt issuance restrictions.		In some cases, for good projects and predictable cash flows, additional indebtedness can be acceptable below predetermined thresholds. Such threshold can be expressed for example as a fixed amount or as a financial covenant (such as a ratio of Debt to Equity, or of leverage (Debt to Ebitda) or a Debt Service Cover Ratio (Cash Available for Debt Service/ Debt service), etc.). Loan documentation in several instances allows obligors to issue new financial indebtedness within certain financial covenants, which depend on the nature of the transaction.	The EBF would like to amend paragraph (1)(g)(vii) of article 501a in the following way: “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 **beyond a predetermined** threshold without the consent of existing debt providers, **such threshold being expressed for example as a fixed amount or as a financial covenant (such as a ratio of Debt to Equity, or of leverage (Debt to Ebitda) or a Debt Service Cover Ratio (Cash Available for Debt Service/ Debt service), etc)**.”

Credit risk – infrastructure financing - Criteria to be fulfilled by equity investors when the obligor is in construction phase -CRR Art. 501a(1)(i)-		The paragraph 1(i) of article 501a of the Parliament report must be deleted since this set of conditions is overly restrictive and will lead to exclude a majority of European infrastructure project opportunities. Many infrastructure projects are pursued by "developers" in the energy sector or by financial sponsors. Those, exactly as industrials would, are used to award the construction contract to experienced / highly reputable contractors.	The EBF believes the focus must instead be made on the quality of the contractors(s), of the construction contract(s) and on the related securities (LDs and performance bonds;…).	Alternatively, we believe any condition to ensure construction phase risks are adequately mitigated should rather be introduced to ensure the contractor has a satisfactory financial strength and expertise and provides comfort through a package of guarantees / performance bonds covering liquidated damages in case of delay or low performances. Besides, equity injections by sponsors can adequately be secured by guarantees / LCs.
Credit risk – infrastructure financing - Regulated or contractually fixed revenues -CRR Art.501a(2)(a)(iv)-		The EBF considers that the amendment of the Parliament report on paragraph 2(a)(iv) of article 501a is not satisfactory. Due to their low risk profile, the EBF considers that the vast majority of renewables power generation projects financed on a limited-recourse basis should be included in the scope of the revised Article 501a. The Parliament's proposal is too restrictive and it is not consistent with the other criteria detailed in the same paragraph.		The EBF would like to amend the Parliament report proposal on paragraph 2(a)(iv) of article 501a in the following way: "It is **partly** regulated or contractually fixed and in addition the project is resilient to downside sensitivities regarding price or volume risk, or a combination of both."

Credit risk – infrastructure financing - Party purchasing the goods or services provided by the obligor -CRR Art. 501a(2)(b)(ii) -		The EBF is of the view that when the party purchasing goods or services provided by the obligor is a PSE, the ECAI rating of the PSE should not be restrictive in case this PSE is benefiting from the implicit or explicit support of an authority listed under paragraph 2(b)(i) of art 501a ie "a central government, regional government or local authority".	Indeed, the rating of some national utilities can be constrained by the country rating while the implicit or explicit support of the government (or any of those institutions can benefit to the obligor.	The EBF would like to amend the Parliament report proposal on paragraph 2(b)(ii) of article 501a in the following way: "A PSE with an ECAI rating with a credit quality step of at least 3 (**<u>except if the PSE benefits from the implicit or explicit support of an authority listed under (i) above in which case (i) applies</u>**);"
Credit risk – infrastructure financing - National or international subsidies -CRR Art. 501a(1)(c), 501a(1)(f) & 501a(2)(b)-		In order to avoid risky transactions, the Parliament's proposals for specifying the case of public subsidies should focus on project finance structures.		The EBF would like to amend the Parliament report proposals on the following paragraphs: - 1(c) of article 501a: "the major source of repayment of the obligation is the income generated by the assets being financed, or from national or international subsidies, grants or investments from public bodies or other legal entities in the area of public services, **<u>limited to Project Finance structures under regulated framework</u>**;" - 1(f) of article 501a: "the re-financing risk of the exposure is low or adequately mitigated; also due to sufficient national or international subsidies, grants or investments from public bodies or other legal entities in the area of public services**<u>, limited to Project Finance structures under regulated framework</u>**;" - 2(b) of article 501a: "where the revenues of the obligor are not funded by payments from a large number of users or from national or international subsidies, grants or investments from public bodies or other legal entities, **<u>limited to Project Finance structures under regulated framework</u>**, the party which agrees to purchase the goods or services provided by the obligor shall be one of the following"

Credit risk – infrastructure financing - Safeguards to ensure completion of the project -CRR Art. 501a(1)(j)				The EBF would like to amend the proposal paragraph (1)(j) of article 501a of the Parliament report in the following way: “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 experienced constructor ~~providing adequate liquidated damages~~ **with satisfactory construction contracts and related securities**;”

Securitisations

Issue/Reference	European Council Position	European Parliament Position	EBF Position	EBF Recommendations
Securitisations -CRR Art. 14-		The EBF welcomes the amendment to article 14 (CRR) brought by the Parliament report to narrow the obligations which will apply to non-EU consolidated subsidiaries of EU institutions.	The purpose of this amendment is to restate the obligations applying to such subsidiaries of EU banks along the lines of the currently applicable regulation, and to clarify the references in article 14 so that they point to the relevant parts of STS regulation Chapter 2, instead of the deleted Part Five of CRR.	Support the Parliament proposal.

Annex - EBF Trilogue analysis and advice on RRM prudential issues

Credit Risk

Issue/Reference	European Council Position	European Parliament Position	EBF Position	EBF Recommendations
Recognition of credit risk mitigation for securitisation positions - CRR Art. 247 -		We strongly support the Parliament position and amendment of Art. 247, par. 3 which would allow Central Governments providing unfunded credit protection to be considered eligible when compliant with Chapter 4 of the CRR.		Support the Parliament proposal.
Credit risk – Eligibility of CIU's for the look-through and mandate based approach (Article 132.3(a))	According to Article 132 (3) institutions will not be able to apply the look through approach (LTA) and/or mandate-based approach (MBA) to third country funds unless they have been marketed in accordance with Article 42 of the AIF Directive. The fall back approach (1,250% risk weight) would then apply to any investments in third country funds which have not been marketed that way. The EBF supports the proposed extension by the Council. Nevertheless, in particular regulated		Follow the BCBS standard on equity investment in funds (bcbs 266) which applies to banks' investments in funds wherever they are established – the only prerequisite being that reliable information is available for the investor.	Extend the amendment proposed by the Council by including funds wherein one of the investors is a development finance institution in a Member State.

	development banks often seek investment opportunities on their own behalf without reverting to funds being actively marketed within the EU (known as a "reverse solicitation". These exposures are only partially captured by the Council proposal.			
Credit risk - Minimum value commitment - Own funds requirements for exposures in the form of units or shares in CIUs – -CRR Art. 132 & 111-		The EBF welcomes the amendments proposed in the Parliament report that enable to maintain the 20% CCF currently applied to Minimum Value Commitments.	Consequently, the EBF supports Article 132(8) (CRR) of the Parliament report but would like to introduce the following changes to avoid any misinterpretation and keep the same wording used in Article 111 (CRR) for off-balance sheet items: (see right column)	Proposed Amendment to Art. 111: "For off-balance sheet minimum value commitments that represent an obligation to compensate an investment into units or shares of one or more CIUs if the market value of the underlying exposure of the CIU or CIUs falls below a certain factor, ~~a conversion factor~~ **the exposure value is multiplied by a percentage** of 20% ~~is applied to determine the exposure value~~ if: (i) the current market value of the underlying exposures of the CIU covers or exceeds the present value of the threshold and (ii) if the institution or another undertaking that is included in the same scope of consolidation can influence the composition of the underlying exposures of the CIU with a view to limiting the potential for a further reduction of the excess, or to the extent that the institution has subordinated its guarantee to the application by the CIU or CIUs of guidelines that will have the same effect of limiting the potential for a further reduction of the excess.".
Credit risk - Minimum value commitment - Own funds requirements for exposures in		Regarding the 20% CCF introduced in Article 132(8) (CRR) of the Parliament report, we understand that this CCF could be only applicable to standardised exposures.	As this 20% CCF should be extended to exposures calculated with internal models, a new paragraph (9) has to be added in Article 152 (CRR) of the Parliament report. (see right column)	Proposed Amendment to Art. 152: **"(9) For off-balance sheet minimum value commitments that represent an obligation to compensate an investment into units or shares of one or more CIUs if the market value of the underlying exposure of the CIU or CIUs falls below a certain factor, the exposure value is multiplied by a percentage of 20 if:**

the form of units or shares in CIUs – -CRR Art. 132 & 152-				**(i) the current market value of the underlying exposures of the CIU covers or exceeds the present value of the threshold and** **(ii) if the institution or another undertaking that is included in the same scope of consolidation can influence the composition of the underlying exposures of the CIU with a view to limiting the potential for a further reduction of the excess, or to the extent that the institution has subordinated its guarantee to the application by the CIU or CIUs of guidelines that will have the same effect of limiting the potential for a further reduction of the excess."**
Credit risk - Minimum value commitment – Treatment of off-balance sheet exposures to CIUs -CRR Art. 132c-		The EU Parliament has introduced a new Article 132c (CRR) related to the RWA calculation for off-balance sheet exposures to CIUs.	In order to avoid any misunderstanding, the EBF would like to have further clarifications about the rationale and the outcome of Article 132c (CRR) of the Parliament report.	The EBF notably needs more explanations on the scope of targeted exposures and the link between Ai and E_i factors.
Credit risk - Minimum value commitment – Exemptions – -CRR Art. 400-		In addition to the 20% CCF, the EBF welcomes the amendment proposed by the EU Parliament to extend the large exposures' exemptions to Minimum Value Commitments introduced in Article 400(1)(la) (CRR) of the Parliament report.	Nevertheless, the exemption should be applicable to exposures calculated with the standardised approach and internal models.	Consequently, Article 400(1)(la) (CRR) of the Parliament report should be amended in the following way: "(la) Exposures arising from a minimum value commitment that meets all of the requirements according to Article 132(8) **and Article 152(9)**."

Recognising the single market and banking union

Issue/Reference	European Council Position	European Parliament Position	EBF Position	EBF Recommendations
G-SII and O-SII scoring -CRD Art. 131- ***<u>High Importance</u>***	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		The EBF supports Article 131 (CRD) of the Council compromise that includes an alternative approach which recognizes the EU as a single jurisdiction. Nevertheless, we deplore the fact that the review of the methodology only concerns G-SIIs and does not include O-SIIs. Indeed, the rationale for the Banking Union recognition is the same for all entities, another approach would unduly restrict the potential beneficiaries and represents a disincentive to cross-border investments. In addition, although this point is not very explicit in the article, we understand that there is a wish to maintain an add-on floor of 1%, which could raise an issue of level playing field between G-SIIs. Allowing to apply a 0.5% G-SII buffer would be positive as it would smooth the cliff effect (up and down).	**We support the EU Council position which includes the recognition of the banking union as a single jurisdiction in measuring the level of cross-border activities in the G-SIIs methodology.** **It should be however applied consistently and without constraints, providing financial institutions with the possibility of both falling in a lower GSII bucket (*as foreseen*) as well as falling off the GSII list (*not currently foreseen*)** **It should also be applied to O-SIIs to be consistent with BU recognition aspiration and to avoid any level playing field issue.**

	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. 3. O-SIIs shall be identified in accordance with paragraph 1. Systemic importance shall be assessed on the basis of at least any of the following criteria: (a) size; (b) importance for the economy of the Union or of the relevant Member State;		Both restrictions would automatically limit the expected additional financing capacity of many banks at a time where European economic growth is gathering pace and need financing. Both restrictions seem unnecessary as national authorities have already the power to impose a higher buffer thanks to the Systemic Risk Buffer.	
Waivers on prudential requierements (Art. 7) ***<u>High Importance</u>***			We deem that making available the possibility to waive capital requirements for cross-border groups remains crucially important and in line with the consistent progress reached at both global and EU level on financial stability measures, first amongst which the Banking Union.	We therefore support the Commission's position, as it best recognises the progress that has been made to establish a banking union with facilitated cross-border business. Parliaments proposal, to introduce a cap to the amount that can be waived at 25% of the minimum own fund requirements, is not feasible. The theoretical advantage of such a waiver, will be eliminated by the administrative.

Waivers on liquidity requirements (Art. 8) ***<u>High Importance</u>***		**The EBF welcomes the refinements to the preferential treatment applied to intragroup transactions, as drafted in the Parliament report in article 428h (CRR, NSFR).**	**Nevertheless, the EBF considers that the preferential treatment should apply automatically (i.e. without the pre-approval of competent authorities) to transactions between institutions located in the Banking union, which is more efficient from an economic point of view as solo level requirements will be impacted by many asymmetries on RSF/ASF rates on operations between financial counterparts (NSFR ratio – CRR Article 428h). These asymmetries may create additional funding needs at solo level, which do not exist at group level. We deem that making available the possibility to liquidity requirements for cross-border groups remains crucially important and in line with the consistent progress reached at both global and EU level on financial stability measures, first amongst which the Banking Union.** **Importantly, the NSFR should always apply at consolidated level as long-term funding is**	**Importantly, the NSFR should always apply at consolidated level as long-term funding is typically managed at this level; this would also avoid that the introduction of the NSFR results in additional elements of fragmentation.** **We support the Parliament's proposal, which is in line with the Commission's proposal, as these proposals better recognise the progress that has been made to establish a banking union with facilitated cross-border business.**

			typically managed at this level; this would also avoid that the introduction of the NSFR results in additional elements of fragmentation (CRR Article 8.	
Treatment for intragroup transactions -CRR Art. 428h-		**The EBF welcomes the refinements to the preferential treatment applied to intragroup transactions, as drafted in the Parliament report in article 428h (CRR, NSFR).**	**Nevertheless, the EBF considers that the preferential treatment should apply automatically (i.e. without the pre-approval of competent authorities) to transactions between institutions located in the Banking union, which is more efficient from an economic point of view as solo level requirements will be impacted by many asymmetries on RSF/ASF rates on operations between financial counterparts (NSFR ratio – CRR Article 428h). These asymmetries may create additional funding needs at solo level, which do not exist at group level.**	**We are of the view that intragroup exemptions in the risk-based and leverage frameworks should be allowed on a non-discretionary basis in CRR Article 113(6). Particularly urgent is the consideration of intragroup exposures, which must be excluded from large exposure limits (CRR Article 400), particularly in the context of the Banking Union, if the competent authority is satisfied that the necessary conditions are met.**

Proportionality

Issue/Reference	European Council Position	European Parliament Position	EBF Position	EBF Recommendations
Definition of small and non-complex institutions -CRR Art. 4(1)(144a) for EP and CRR Art. 430a(4) for Council-	(4) "small institution" means an institution that meets all of the following conditions, provided that it is not a large institution as defined in point (1) (a) the 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 disclosure period. Member States may provide for a lower threshold; (b) the institution's trading book and derivative activities do not exceed the	(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 disclosure period; (b) the institution is subject to no obligations or is subject to simplified obligations in relation to recovery and resolution planning in accordance with Article 4 of Directive 2014/59/EU;	The EBF welcomes the definition of small and non-complex institutions included in **Article 4(1)(144a) of the Parliament report**.	*EBF Amendment :* *"(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 disclosure period;* *(b) the institution is <u>subject to no obligations or is subject to simplified obligations</u> in relation to recovery and resolution planning in accordance with Article 4 of Directive 2014/59/EU;* *(c) its trading <u>book business is classified as small – less than 10% of the institutions's total assets and less than EUR 300 million as defined in Article325a (1).</u>;* *(d) the total value of its derivative positions is less than or equal to 2% of its total on- and off-balance sheet assets, where<u>by</u> only derivatives which qualify as positions held with trading intent are included in calculating the derivative positions;* *(e) the institution does not use internal models for calculating <u>its</u> own funds requirements;* *(f) the institution has not communicated to the competent authority an objection to being classified as a small and non-complex institution;*

	thresholds set out in Articles 94 (1) and 273a (2), respectively; (c) 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; (d) 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; (e) the institution is subject to simplified obligations in relation to recovery and resolution	(c) its trading book business is classified as small within the meaning of Article 94; (d) the total value of its derivative positions is less than or equal to 2% of its total on- and off-balance sheet assets, whereby only derivatives which qualify as positions held with trading intent are included in calculating the derivative positions; (e) the institution does not use internal models for calculating its own funds requirements; (f) the institution has not communicated to the competent authority an objection to being classified as a small and non-complex institution; (g) 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;		*(g) 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;* *By way of derogation from point a and provided that the competent authority considers this to be necessary, the competent authority may at its discretion lower the threshold value from EUR 5 billion to as low as EUR 1,5 billion or to as low as 1% of the gross domestic product of the Member State in which the institution is established, provided that the amount equalling 1% of the gross domestic product of the Member State in question is smaller than EUR 1,5 billion;* *By way of derogation from point <u>(e)</u> the competent authority may allow the limited use of internal models for calculating <u>the</u> own funds requirements for subsidiaries using <u>the</u> internal models developed at group level, provided that the group is subject to the disclosure requirements laid down in Article 433a or in Article 433c at consolidated level."*

	planning in accordance with Article 4 of Directive 2014/59/EU;	By way of derogation from point a and provided that the competent authority considers this to be necessary, the competent authority may at its discretion lower the threshold value from EUR 5 billion to as low as EUR 1,5 billion or to as low as 1% of the gross domestic product of the Member State in which the institution is established, provided that the amount equalling 1% of the gross domestic product of the Member State in question is smaller than EUR 1,5 billion; By way of derogation from point (e) the competent authority may allow the limited use of internal models for calculating the own funds requirements for subsidiaries using the internal models developed at group level, provided that the group is subject to the disclosure requirements laid down in Article 433a or in Article 433c at consolidated level.		

Definition of large institutions -CRR Art. 4(1)(144b)- for EP and CRR Art. 430a(1) for Council	(1) ''large institution'' means an institution that meets any of the following conditions: (a) the institution has been identified as a global Systemically important institution ('G-SII') in accordance with Article 131(1) and (2) of Directive 2013/36/EU; (b) the institution has been identified as other systemically important institution ('O-SII') in accordance with Article 131(1) and (3) of Directive 2013/36/EU; (c) the institution is, in the Member State where it is established, one of the three largest institutions by total value of assets; (d) the total value of the institution's assets on an individual basis or, where applicable, on the basis of its consolidation situation in accordance with this Regulation and Directive 2013/36/EU is	(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 the basis of its consolidated situation is equal to or larger than EUR 30 billion; (e) the ratio of its total assets relative to the GDP of the Member State in which it	The EBF favours the Council proposal but with an amendment regarding criteria (c). Being the second biggest bank in a jurisdiction would not automatically mean that this institution should be qualified as a large institution if this institution fulfils the definition of small and non-complex institution.	*EBF Amendment:* ***Para. (c) should be deleted because as a criteria for defining proportionality is pointless:*** ~~(~~c) the institution is, in the Member State where it is established, one of the three largest institutions by total value of assets; except if the institution fulfil the criteria to be qualified as small and non-complex institution

	equal to or larger than EUR 30 billion;	is established is on average equal to or larger than 20 % over the four-year period immediately preceding the current annual disclosure period;		
Scope of exempted entities and impacts on the Single Rulebook and the Banking Union -CRD Art. 2(5)-		**“(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', 'L-Bank, Staatsbank für Baden-Württemberg', '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**	**Concerning the exemption of the 14 regional German banks adopted during the Council compromise on 25 May 2018 (CRD Art.2(5)(6)), the EBF is formally opposed to this exemption that could have detrimental impacts on the Single Rulebook and the functioning of the Banking Union.**	**EBF Amendment: Delete**

		mainly engaged in banking transactions, and undertakings recognised under that law as non-profit housing undertakings;";		
Scope of exempted entities and impacts on the Single Rulebook and the Banking Union CRD Art. 2(5a)-		(f) if the institution has been established by a regional government or a local authority, the majority of its activities are confined to the Member State where its head office is situated; (g) in the case of institutions whose own funds requirements, financing needs or exposures are guaranteed by at less than 75% either directly or indirectly by a Member State's central government, regional government or local authority in accordance with point (d), the total value of the institution's assets is below EUR 30 billion;;	The EBF supports the initial proposal made by the EU Commission in Article 2(5a) points d) and h) (CRD) related to the public guarantee and the maximum ratio of the institution's total assets over the GDP of the Member State respectively. Even if the EU Parliament also introduces conditions to determine the scope of exempted entities, its proposals are less constraining than those introduced by the EU Commission.	EBF Amendment: (f) its activities are confined to the Member State where its head office is situated; (g) the total value of the institution's assets is below EUR 30 billion; *institution is <u>subject to no obligations or is subject to simplified obligations</u> in relation to recovery and resolution planning in accordance with Article 4 of Directive 2014/59/EU;*

Annex - EBF Trilogue analysis and advice on RRM prudential issues

Governance

Issue/Reference	European Council Position	European Parliament Position	EBF Position	EBF Recommendations
Governance - Monitoring by the competent authority of loans to related parties / Power given to competent authority to limit or prohibit such loans – -CRD Art. 88(1) ***HIGH PRIORITY***		The EBF is against article 88(1) (CRDCRDCRD) of the Parliament report.	Although the EBF understands the need to mitigate conflicts of interest which can occur when an institution grants a loan to a board member, the EBF is against article 88(1) (CRD) of the Parliament report for the following reasons: - Both the EBA and the ECB have issued guidelines on how to take loans into consideration when assessing whether members are subject to concrete conflicts of interest (independence of mind). Furthermore, according to art. 88 CRD IV, the management is accountable for the implementation of governance arrangements, including the prevention of conflicts of interest. The Basel Committee for Banking Supervision (BCBS), in its Guidelines on Corporate governance principles for banks, states that the board should have a formal written conflicts of interest policy	With our proposed amendment, the IT developments could be reasonable, the right to privacy of the board members respected, the potential candidates to the board undeterred, without prejudicing the sound governance of the banking industry. Consequently, the EBF proposes either to delete or, at least, to amend Article 88(1) (CRD) of the Parliament report in the following way: (14a) In Article 88(1), the following subparagraph is inserted at the end: "Member States shall at least ensure that ~~management bodies of an~~ institution**s** monitor loans to **the members of the management body in its supervisory function and their** related parties ~~on an ongoing basis and notify such loans to the competent authority in case they could give rise to any conflicts of interest. Competent authorities shall have the power to prohibit or limit such loans~~**, unless such loans are ordinary transactions concluded under normal conditions.** **The institution shall define the conditions under which such loans, as declared by the said members, give rise to potential conflicts of interests.** **Member States shall ensure that loans that are not ordinary transactions concluded under normal conditions are subject to a specific approval procedure within the institution**."

			which should include also adequate procedures (for transactions with related parties). Consequently, this suggested rule would not bring any added value in this sense and might dissuade shareholders to remain or become board members, which would be an issue, especially for cooperative banks as members of the management body are by nature clients and holders of cooperative shares. - In Member States, legislations, regulations and internal procedures effectively prevent or mitigate conflicts of interest which may affect the members of the management body. - The prohibition or the limitation of a loan suspected of being affected by a potential conflict of interest would be a severe interference in the management of a credit institution. - Such external supervision of loans over a wide perimeter (board members and affiliated	

			parties) which could give rise to a conflict of interest could not be traced in practice through the information system for certain relatives of a board member. It could be impossible for an institution to cross check a loan offer proposed to a client with a member of the management body although they are related parties. Indeed, the related parties can have different names, the family circle, the legal persons related to the board members, the family relationships can change significantly in short periods of time. It is thus absolutely impossible for the banks to identify all the related parties and to monitor continuously the professional and personal environment of each of its board members. The IT developments would be unreasonable at the best, and more likely unfeasible. - The interference of the banks with the personal and professional life of its board members could be problematic considering their right to personal privacy.	

			- At least, when referring to loans, the different characteristics of the loans should be taken into account and treated in different ways, thus loans that are ordinary transactions concluded under normal conditions should not be in the scope of this provision. For other loans, we suggest internal approval procedures which could include an approval by the management body in its supervisory function. In such case, the involved board member shall be precluded from voting on this matter. - The related parties should be identified on a declarative basis by the board members. The banks should not bear the burden of identifying all the related parties to a board member, it being provided that such identification of loan offers made to relatives of a board member could not be technically feasible in certain circumstances. - The declaration of all these loans would be a very high administrative burden. Giving	

			the supervisor the power to ask for information about these loans should be sufficient.	
Governance - Definition of related parties – -CRR Art. 4(39a)- ***High Priority***		The scope of application proposed by the European Parliament on "related parties" to any "person's family" or "legal person" related to the board member is too broad, vague and not realistic. For instance, Article 91 (CRD) of the European Parliament report would apply to customary intra-group loan transactions which is particularly common in cooperative groups where the central body is the guarantor of the daily funding and the solvency of its affiliated institutions in that respect. It would also apply to any legal persons that is related to the members of the management body such as charities, cooperatives, associations (a local	Although the EBF understands the need to define the notion of "Related Parties", it is necessary to have a more consistent and more legible definition of "Related Parties" than the definition provided by Article 4(39a) (CRR) of the Parliament report. The scope should be limited to natural persons whose family relationship is very close and clearly identified and only to companies whose purpose is commercial and controlled and / or managed by the board member. The definition of "related party" suggested conforms the rule on the limitation of directorships set out in article 91 (point 5) of CRD	The EBF proposes to amend Article 4(39a) (CRR) of the Parliament report in the following way: " (3) Article 4 is amended as follows: (…) (da) the following point 39a is inserted: "related party" means ~~either a natural person or a close member of that person's family or a legal person that is related to the management body of an institution;"~~ **in relation to a member of the management body in its supervisory function:** **(a) a spouse or a registered partner in accordance with national law; or** **(b) a child or parent; or** **(c) a commercial entity which is directly controlled or managed by such member, it being provided that intra-group loans are outside the scope of this definition. »**

		football club for instance) although they have nothing to do with business companies.	IV which focus on commercial companies.	
Governance - Ex-ante assessment of the members of the management body in its supervisory function – -CRD Art. 91(13a)-		The EBF is against article 91(13a) (CRD) of the Parliament report.	- Half of the Member States have decided to follow the ex-post assessment procedure pursuant to national corporate law, when implementing CRD IV. The EBA Guidelines on internal governance, dated September 2017 and the ECB Guide updated in May 2018 both recognize the ex-post assessment. We suggest to keep the principle as a matter of legal certainty of the authorization procedures. - An ex ante procedure could be incompatible with provisions of corporate law: => The co-optation by the board of a new member in the event of a replacement of a board member given the duration of an	Consequently, the EBF proposes either to delete or, at least, to amend Article 91(13a) (CRD) of the Parliament report in the following way: “13a. Notwithstanding Article 13(1), competent authorities may assess institutions’ compliance with the requirements according to Article 91 (1) to (8) of this Directive regarding the management body in its supervisory function before or after the appointment of one of its members **in accordance with national law**.”

			assessment and approval procedure (average 4 months as from the date on which the supervisor considers on its own the file to be complete). => The sovereignty of the vote of the general assembly electing the board member. - Ex-ante assessment is not possible in some Member states. For example: if the board approve the draft resolution in the perspective of the shareholders meeting in February for a nomination in May by the shareholders, the notification file shall be sent to the regulators in September at the latest (4 months before February) which would mean having the “go” decision from a potential candidate in July the year before the nomination which is too much in advance of the nomination. One has to bear in mind the difficulties	

			to find candidates given the constraints linked to the limitation of the number of directorships, time commitment and other fit and proper requirements. - We cannot ask a candidate to freeze all his directorships for such a long period (i.e. not to accept new directorships, resign from directorships). - How to deal with potential delay in the response from the competent authority? Experience shows that the competent authority continuously asks new questions and that at the end of the day the whole process lasts for a very long time (from time to time far beyond the announced 3 months). It is not possible to postpone the shareholders' meeting once convened (when for example there is a strict legal framework to be	

			complied with for the holding of annual general meetings). - Because of some Member states, the regulation applicable to listed companies and the specificities regarding board members representing employees, ex-ante assessment would not be possible. This is therefore very important to keep the possibility to provide for the ex post assessment.	

Other Issues

Issue/Reference	European Council Position	European Parliament Position	EBF Position	EBF Recommendations
Own funds – Danish compromise -CRR Art. 49 & 18-	The EBF rejects Article 49(1) (CRR) introduced in the Parliament report while the Council compromise had enabled to adopt a satisfactory wording for Article 18.6(a) (CRR).[5]		Indeed, this Parliament's amendment raises the following three main issues: - Financial conglomerates may be required to be granted a new authorisation in 2022 or 2023. Any transitional period could probably lead to very dangerous problems of interpretation. - Should the current methodology be replaced by a temporary regime in which the Danish compromise would become the default option without any prior authorisation of the supervisor, this would clearly weaken the current prudential justification. - Lastly, the reference to resolution requirements not aligned with the solvency requirement denies totally the text and the spirit of the Danish compromise.	For the reasons described here, the EBF insists on the importance to maintain the current wording of the CRR.

[5] The Italian Banking Association does not agree with this position.

Outsourcing -CRD Art. 85-		The EBF is in favour of the inclusion in the policies and processes to evaluate and manage the exposure to operational risk of risks resulting from outsourcing (article 85 (1) of the CRD).	However, the outsourcing of non-critical or important functions should be out of the scope of this article. Otherwise this would create an unmanageable administrative burden on the institutions without adding any value to the sound management of the exposure to operational risk. Furthermore, due to the high number of outsourcing arrangements, especially in cooperative groups, this could lead to an excess of information, impeding an effective evaluation of the most important operational risks considering outsourcing arrangements.	Consequently, the EBF proposes to amend Article 85 (1) (CRD) of the Parliament report in the following way: (14) In Article 85, paragraph (1) is replaced by the following: "1. Competent authorities shall ensure that institutions implement policies and processes to evaluate and manage the exposure to operational risk, including model risk and risks resulting from outsourcing **<u>of critical or important functions</u>**, and to cover low-frequency high-severity events. Institutions shall articulate what constitutes operational risk for the purposes of those policies and procedures."
ADI (Art. 52 (1) (l) (i) CRR		"(i) they are paid out of distributable items, ***or reserves built under national law***;	The reference to national legislation and, hence, local accounting standards creates differences at European level with regard to the treatment of AT1 instruments. This gives rise to uncertainty to investors of AT1 instruments and would be an obstacle to European harmonisation.	The EBF supports the ECON proposal. The amendment is necessary for a level-playing-field in Europe in case of coupon payments on AT1 Instruments.

Inter-mediate EU parent under-taking (Art. 21 b (6a/7) CRD)	7. By way of derogation from paragraph 1, 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 + 4 years].	6a. By way of derogation from paragraph 1, groups operating through more than one institution in the Union and with total value of assets equal or exceeding EUR 30 billion, or subsidiaries of a non-EU G-SII, 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 this Directive + three years].	From our point of view, the wording of the Council's and EP's text is misleading and should be clarified. Intention of Art. 21b (6a) respectively (7) CRD V is to establish a transitional period of three years for the establishment of Intermediate EU Parent Undertakings for third country groups. Without the amendment of "third country" the text might later on be misinterpreted in a way that would require all groups - even European - to establish an IPU. However, this was not the intention.	EBF suggests clarifying that the transition period is meant for third country groups, by including the words "third country". 7. 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 + 4 years].
Support efficiency in regulatory reporting requirements		*Article 101a 'The creation of a consistent and integrated system for collecting statistical and prudential data'.* The EBA shall develop a consistent and integrated system for collecting statistical and prudential data and report its findings to the Commission no later than [31 December 2019]. The report,	*Regulatory reporting requirements have increased heavily in recent years introduced by different authorities. Data points asked are often duplicative and overlapping with each other and the definitions used are unclear. We strongly support European co-legislators to find*	

		involving all the competent authorities, as well as authorities in charge of deposit guarantee schemes, statistical authorities, all relevant authorities, in particular the ECB and its previous work on statistical data collections, and taking into account the previous work that has been conducted with regard to a European Reporting Framework, shall be based on an overall benefits and cost analysis amongst other with regards to the establishment of a central collection point and as a minimum include *(see art 101a).*	*ways to improve interoperability, efficiency, standardization and streamlining of regulatory and statistical reporting requirements and we support co-operation between different authorities, mainly the EBA, ECB and the SRB.*	