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COVER NOTE

from:	Mr Vitor Constâncio, Vice-President of the European Central Bank
date of receipt:	30 January 2012
to:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
Subject:	OPINION OF THE EUROPEAN CENTRAL BANK Proposal for a Directive of the European Parliament and of the Council on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate CON/2012/5

Delegations will find attached ECB Opinion CON/2012/5 of 25 January 2012.

Encl.: CON/2012/5

EUROPEAN CENTRAL BANK

EUROSYSTEM

OPINION OF THE EUROPEAN CENTRAL BANK

of 25 January 2012

on a proposal for a Directive on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and a proposal for a Regulation on prudential requirements for credit institutions and investment firms

(CON/2012/5)

Introduction and legal basis

On 20 September 2011 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a Directive of the European Parliament and of the Council on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate[1] (hereinafter the 'proposed directive'). On 30 November 2011, the ECB received a request from the Council on a proposal for a Regulation of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms[2] (hereinafter the 'proposed regulation').

The ECB's competence to deliver an opinion on the proposed directive and regulation is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union since the proposed directive and proposed regulation contain provisions affecting the basic tasks of the European System of Central Banks (ESCB), i.e. to define and implement the monetary policy of the Union, to promote the smooth operation of payment systems and to contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system. For reasons of efficiency and clarity, the ECB has decided to issue a single opinion on these two legislative proposals. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1 COM(2011) 453 final.

2 COM(2011) 452 final.

General observations

1. *Objectives of the proposed regulation and proposed directive*

   On 20 July 2011, the European Commission adopted the proposed directive and proposed regulation, which are to replace Directives 2006/48/EC[3] and 2006/49/EC[4]. The proposals represent an important step towards strengthening regulation of the banking and investment firms sector and creating a sounder and safer financial system in the Union. The ECB welcomes the Union's strong commitment to implement international standards and agreements in the field of financial regulation, while taking into consideration, where relevant, specific features of the Union's legal and financial system. The ECB strongly supports the timely and effective implementation of the Basel capital and liquidity standards[5]. To this end, the ECB notes the leading role taken by the Commission in delivering on the G20 commitment 'to adopt and implement fully these standards within the agreed timeframe that is consistent with economic recovery and financial stability'[6] by being among the first to propose implementation of the Basel III framework[7] and the Group of Governors and Heads of Supervision (GHOS) agreements[8] into Union legislation. The proposed measures will substantially increase systemic resilience, contribute to the smooth functioning of the financial system and ensure a stable and sustainable framework for the provision of financial services in the Union.

2. *Reform of Union banking legislation*

   The ECB welcomes the innovative approach taken by the Commission, in particular with regard to the proposed regulation, which incorporates most of the technical Annexes to Directives 2006/48/EC and 2006/49/EC and limits Member State options and discretion. The proposed framework will lead to increased legal certainty, while reducing duplication risks at Member State level. The financial crisis also demonstrated the need to act rapidly and efficiently. It is important to ensure the appropriate level of flexibility for the development of Union banking regulation. As regards future reviews of the proposed regulation and as pointed out in previous opinions[9], the ECB recommends ensuring that only framework principles contained in the proposed regulation

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3 Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (OJ L 177, 30.6.2006, p. 1).

4 Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (OJ L 177, 30.6.2006, p. 201).

5 See point 29 of the G20 Seoul Summit Leaders' Declaration of 11 and 12 November 2010 stating that: 'The new framework will be translated into our national laws and regulations, and will be implemented starting on January 1, 2013 and fully phased in by January 1, 2019'.

6 Point 29 of the G20 Seoul Summit Leaders' Declaration of 11 and 12 November 2010.

7 See 'Basel III: A global regulatory framework for more resilient banks and banking systems', Basel Committee on Banking Supervision, December 2010, revised version June 2011 (hereinafter the 'Basel III agreement').

8 See the GHOS press releases of 26 July and 12 September 2010, available on the BIS's website at www.bis.org.

9 See, for instance, paragraph 2 of ECB Opinion CON/2009/17 of 5 March 2009 at the request of the Council of the European Union on a proposal for a Directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (OJ C 93, 22.4.2009, p. 3). All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

reflecting basic political choices and substantive matters remain subject to the ordinary legislative procedure. Technical rules, including those in the proposed regulation, should be adopted as delegated or implementing acts in accordance with Articles 290 and 291 of the Treaty, which will thereby emerge as the main body of rules applying to Union financial institutions.

3. *Single European rulebook in the financial sector*

3.1 As stated in previous opinions[10], the ECB strongly supports the development of a single European rulebook for all financial institutions[11] as it promotes the smooth functioning of the single market within the Union and facilitates greater financial integration in Europe. A single European rulebook ensures that financial institutions providing financial services in the single market comply with one set of prudential rules. This mitigates regulatory arbitrage opportunities and distortions to competition. Furthermore, harmonised rules improve transparency and reduce regulatory and compliance costs.

3.2 The single European rulebook requires: (a) clear and appropriate identification of relevant areas for delegated and implementing acts; (b) adequate involvement of the European Supervisory Authorities (ESAs), thereby using the expertise of authorities in developing draft technical standards; (c) a consistent and coordinated approach across financial sectors; (d) coherent criteria across all Union financial legislation for recourse to delegated acts or implementing acts, with or without the prior development of draft regulatory or draft implementing technical standards by the ESAs[12]. In the banking sector, the systematic involvement of the European Banking Authority (EBA) in the adoption of implementing Union legislation through the development of draft technical standards, especially when prior technical analysis is required, will ensure a flexible regulatory framework at Union level that will effectively underpin the single market in financial services within the Union.

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10 See, for instance, paragraph 3 of ECB Opinion CON/2011/42 of 4 May 2011 on a proposal for a directive of the European Parliament and of the Council amending Directives 2003/71/EC and 2009/138/EC in respect of the powers of the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority (OJ C 159, 28.5.2011, p. 10).

11 See paragraph 20 of the European Council conclusions of 18 and 19 June 2009.

12 Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12), Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48) and Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84). The Regulations establishing the ESAs introduce a procedure for the development by the ESAs of draft technical regulatory and implementing standards prior to their endorsement by the Commission under the form of delegated and implementing acts, respectively.

4. *ECB's advisory role regarding draft delegated and implementing acts*

4.1 Given the importance of delegated and implementing acts as a substantial component of the single European rulebook, the ECB makes the following observations with regard to the exercise of its own advisory role under Articles 127(4) and 282(5) of the Treaty.

4.2 Commission draft delegated and implementing acts qualify as 'proposed Union acts' within the meaning of Articles 127(4) and 282(5) of the Treaty. Both delegated and implementing acts constitute Union legal acts. Significantly, the majority of the language versions of Article 282(5) of the Treaty refer to 'draft' Union legal acts on which the ECB is required to be consulted[13.] Therefore, the scope of the duty to consult the ECB cannot be confined only to those draft acts based on a Commission proposal.

4.3 In Case C-11/00[14], the Court of Justice clarified that the obligation to consult the ECB is intended 'essentially to ensure that the legislature adopts the act only when the body has been heard, which, by virtue of the specific functions that it exercises in the Community framework in the area concerned and by virtue of the high degree of expertise that it enjoys, is particularly well placed to play a useful role in the legislative process envisaged'.

4.4 Against this backdrop, in order to deploy the full benefits of the exercise by the ECB of its advisory role, the ECB should be consulted in due time on any draft Union acts, including draft delegated and implementing acts, falling within its fields of competence. Furthermore, having regard to the importance of draft technical standards as part of the development of Union financial services legislation, the ECB will exercise its advisory role on matters within the ECB's competence taking into utmost account the timelines for adoption of these acts and the need to ensure the smooth adoption of implementing legislation.

Specific observations

5. *Macro-prudential supervision and scope for stricter rules*

5.1 The proposed regulation lays down the prudential standards that will have direct application across the Union. As stated above, the ECB strongly supports the Commission's approach, which effectively establishes a single European rulebook for financial institutions. In addition, the ECB fully supports the aim of addressing targeted risk exposures concerning, *inter alia*, certain sectors, regions or Member States through delegated acts that empower the Commission to impose stricter prudential requirements, where necessary to address changes in the intensity of micro- or macro-

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13 Article 282(5) of the Treaty refers to draft Union acts in the following language versions: Bulgarian ('проект на акт на Съюза'); Spanish ('proyecto de acto de la Unión'); Danish ('udkast'); German ('Entwurf für Rechtsakte der Union'); Estonian ('ettepanekute'); Greek ('σχέδιο πράξης της Ένωσης'); French ('projet d'acte de l'Union'); Italian ('progetto di atto dell'Unione'); Latvian ('projektiem'); Lithuanian ('Sąjungos aktų projektų'); Dutch ('ontwerp van een handeling van de Unie'); Portuguese ('projectos de acto da União'); Romanian ('proiect de act al Uniunii'); Slovak ('navrhovaných aktoch Únie'); Slovenian ('osnutki aktov Unije'); Finnish ('esityksistä'); Swedish ('utkast'). The Irish version reads 'gniomh Aontais arna bheartu', which corresponds to the concept of 'planned' Union acts.

14 Judgment of 10 July 2003 in Case C-11/00, *Commission of the European Communities* v *European Central Bank* ([2003] ECR 2003, p. I-7147, in particular paragraphs 110 and 111).

prudential risks which arise from market developments[15]. Nonetheless, the delegated acts the Commission can adopt should extend to prudential requirements on large exposures and disclosure requirements as well as to leverage and liquidity requirements, once leverage and liquidity requirements effectively become part of the applicable Union regulatory framework.The ECB notes, however, that a timeframe of six months or less for the imposition of stricter requirements to address such risks will be insufficient in many cases and would require a much longer timeframe, e.g. two years or more, to be effective and to achieve the desired objective[16].

5.2 Moreover, the ECB considers it important that the proposed regulation makes it possible for Member States to apply more stringent prudential requirements where systemic risks to financial stability arise. The need for such an arrangement is justified, *inter alia*, by the fact that economic and financial cycles are not completely harmonised across Member States, and Member States may face different types of systemic risk. Furthermore, there are also significant differences in the structural features of the financial sectors across Member States. Authorities with a macro-prudential mandate may therefore need to tighten the quantitative ratios and limits of certain prudential policy instruments contained in the proposed regulation to better adjust prudential requirements to their specific cyclical situation and to effectively address associated systemic risks[17].

5.3 Against this background, certain provisions in the proposed regulation allow for some adjustment of prudential requirements at national level. The first is the introduction of a counter-cyclical capital buffer framework[18]. The second is the proposed extension of the scope of the supervisory review process to allow national authorities to apply more stringent prudential rules to certain institutions[19]. The ECB notes, however, that this proposed extension consists primarily of a micro-prudential tool designed to address risks originating from individual institutions or groups of institutions and not for use as a macro-prudential policy tool to address systemic risks. Third, the proposed regulation introduces the possibility for national authorities to adjust risk weights or set stricter criteria, e.g. loan-to-value ratio, for exposures secured on residential or commercial real estate if the risk characteristics of that specific market segment so justify in a given Member State[20].

5.4 The ECB supports the abovementioned framework, which allows national authorities to adjust certain prudential requirements and considers that it should be expanded to allow national authorities to impose stricter prudential requirements for macro-prudential purposes at national

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15 Article 443 of the proposed regulation.

16 See recital 87 of the proposed regulation.

17 See the joint Financial Stability Board, International Monetary Fund and Bank for International Settlements progress report to the G20 on macro-prudential policy tools and frameworks of 27 October 2011, available on the FSB's website at www.financialstabilityboard.org.

18 See Title VII, Chapter 4 of the proposed directive.

19 Article 95 of the proposed directive.

20 Article 119(2) of the proposed regulation.

level. This is necessary in order to address financial stability concerns stemming from the structural features of a national financial system or systemic risks in a comprehensive and effective manner. Therefore, the scope of the proposed framework could be extended to cover stricter requirements for: (a) capital; (b) limits on large exposures; (c) liquidity requirements and leverage ratio, once introduced into the Union regulatory framework. In this context, national authorities should be allowed to impose stricter requirements in their national legislation, i.e. to tighten the quantitative ratios and limits for items (a), (b) and (c), following a notification of the proposed measures to the European Systemic Risk Board (ESRB); however, such requirements should be applied in full compliance with the other aspects of the provisions of the proposed regulation which would remain unchanged.

5.5 With a view to maintaining transparency and ensuring the consistency of measures adopted within the Union, the ECB recommends that the possible application of more stringent requirements by national authorities be subject to safeguards. In this regard, the ESRB could play an important coordinating role in assessing financial stability concerns and possible unintended consequences and spill-over effects from such measures on other Member States. Moreover, the EBA and the ESRB should publish regular updates on their respective websites of measures adopted by Member States that are more stringent than those in the proposed regulation. Lastly, where the financial stability concerns that triggered the application of more stringent prudential measures cease to exist, the quantitative ratios and limits should return to the harmonised level set by the proposed regulation.

5.6 Overall, the possible application of more stringent prudential measures by specific Member States may enhance both financial stability and financial integration in the Union. Concretely, by mitigating systemic risks and protecting the single market from the build-up of excessive systemic risks in a coordinated way, authorities may effectively contribute to the smooth functioning of the Union financial system and promote the sustainable provision of financial services in the single market in the medium to long term.

6. *Own funds*

6.1 The ECB strongly supports the proposed strengthening of the eligibility criteria for regulatory own funds as well as the further harmonisation of deductions. Own funds requirements represent a cornerstone of the internationally agreed reform of capital. Therefore, from a financial stability perspective, it is essential that the requirements for own funds in the proposed regulation ensure that the Union banking sector will hold capital of the highest quality in particular with regard to common equity tier 1 capital, which will result in a high degree of loss absorbency. The crisis has led the new reform of capital to place particular emphasis on common equity tier 1 capital. The aim is to ensure European credit institutions hold common equity tier 1 capital which is as high in

quality as their international peers and also to ensure full consistency with the Basel III agreement as endorsed by the GHOS[21]. In this respect, the following issues should be highlighted.

6.2 The ECB supports the list of conditions to be met to qualify as common equity tier 1 items, which reflect the basic features of equity in terms of permanence, loss absorbency and flexibility of payments. In line with the Basel III agreement, the 'capital instruments' referred to in the proposed regulation should consist solely of shares in companies as defined under the respective national laws in the Member States (with the exception of capital instruments issued by mutuals, cooperative societies and similar institutions[22]) and should qualify as common equity tier 1 items only if they meet all the conditions defined in the proposed regulation[23]. The ECB also recommends that the Commission, through the adoption of an implementing act, endorse the list of forms of the shares eligible as common equity tier 1 capital established by the EBA in order to give the list a binding effect. In addition, draft technical standards further specifying the above conditions should be developed. Compliance with these conditions should be ensured by competent authorities in cooperation with the EBA on an ongoing basis. These safeguards would contribute to further ensuring consistency in the Union and reducing the scope for financial engineering.

6.3 As regards significant investments in insurance undertakings, reinsurance undertakings and insurance holding companies, the Basel III agreement requires that, over a certain threshold, these investments be deducted from common equity tier 1 capital, i.e. the corresponding deduction approach[24]. The Basel III agreement takes into account that these entities are outside the scope of regulatory consolidation and aims at avoiding double counting of regulatory capital. The proposed regulation maintains the possibility, already existing in Directive 2006/48/EC, for competent authorities to authorise the application of the methods set out in Directive 2002/87/EC[25] as an alternative to 'deduction'[26].

6.4 The ECB generally shares the view that regulatory own funds within a banking group should be used only to cover losses arising from banking risks. Thus, the ECB supports addressing the issue of double use of regulatory own funds both at the banking group level, i.e. consolidation of all subsidiaries that are institutions and financial institutions[27], and at the financial conglomerate level, i.e. also including insurance subsidiaries in the scope of regulatory consolidation. In this context, application of the methods set out in Annex I to Directive 2002/87/EC should not at any time result in higher regulatory own funds for groups of institutions and financial institutions as referred to in

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21 See the GHOS press releases of 26 July and 12 September 2010.

22 See Article 27 of the proposed regulation.

23 See Article 26(1) of the proposed regulation.

24 See paragraph 84 of the Basel III agreement.

25 Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

26 See Article 46 of the proposed regulation.

27 In accordance with Article 16 of the proposed regulation.

the proposed regulation[28] vis-à-vis what would be the regulatory own funds if the deduction approach applied.

6.5 Taking into account the Basel III agreement and also, as appropriate, the international principles of the Joint Forum on Financial Conglomerates, the ECB recommends ensuring full cross-sectoral consistency among these texts[29], which requires aligning the proposed regulation with the corresponding provisions of Directives 2009/138/EC[30] and 2002/87/EC[31]. Moreover, while the ECB supports the development by the Joint Committee of ESAs of draft technical standards with regard to the methods set out in Directive 2002/87/EC, it recommends, for the sake of legal clarity and to avoid cross-sectoral inconsistencies in financial services legislation, introducing this empowerment only in Directive 2002/87/EC[32].

6.6 In January 2011, the GHOS made public their agreement that all additional tier 1 and tier 2 instruments of an institution should be capable of being fully and permanently written down or converted fully into common equity tier 1 capital at the point of non-viability of the institution[33]. The proposed regulation confirms the legislator's intent to incorporate this agreement in full[34]. The ECB understands that the Commission will incorporate such a requirement for both additional tier 1 and tier 2 instruments in conjunction with the Commission's forthcoming proposal on bank resolution and crisis management in the financial sector.

7. *Capital buffers*

7.1 The ECB welcomes the choice of the proposed directive for the introduction of the framework for capital buffers since this approach will allow authorities to address systemic risks in an effective and flexible way across Member States. The ECB considers, in particular, the counter-cyclical capital buffers to be a key element of a wider macro-prudential toolkit[35] and strongly supports the introduction of an explicit counter-cyclical element in financial regulation.

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28 In accordance with Article 16 of the proposed regulation.

29 See paragraph 6.1 of Opinion CON/2011/42.

30 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

31 A comparison of these texts reveals a number of differences regarding the treatment of cross-sectoral participations at individual and group level. For example, under Directive 2009/138/EC, insurance undertaking's participations in institutions or financial institutions are deducted at individual level irrespective of whether the insurance undertaking and institutions are part of the same financial conglomerate. By contrast, the proposed regulation provides for a waiver, i.e. competent authorities can decide not to deduct institution's holdings in other institutions, financial institutions or insurance undertakings at individual level where: the entities are part of the same financial conglomerate; or where they are not part of a financial conglomerate but one of the three methods as set out in Annex I to Directive 2002/87/EC is used. As regards the scope of group supervision, credit institutions, investment firms and financial institutions are included in the scope of group supervision under Directive 2009/138/EC. Conversely, the scope of supervision under the proposed regulation is limited to institutions and financial institutions that are subsidiaries of an institution, or if applicable the financial holding company or mixed financial holding company (Article 16 of the proposed regulation).

32 See Article 139 of the proposed directive amending Article 21 of Directive 2002/87/EC. This would require the deletion of Article 46(4) of the proposed regulation.

33 See recital 27 of the proposed regulation and the GHOS press release of 13 January 2011.

34 See recital 27 of the proposed regulation.

35 The counter-cyclical capital buffer is to be activated in periods of excessive credit growth associated with the build-up of systemic risks and released in stress situations.

7.2 A counter-cyclical capital buffer can substantially improve the resilience of the banking sector and may thus contribute to the smooth provision of financial services throughout the business cycle. In this regard, the ECB emphasises that a decision with regard to a counter-cyclical capital buffer by national authorities should be subject to unconstrained reciprocity requirements up to 2,5% of risk-weighted assets, while voluntary reciprocity should apply above this threshold. In addition, the ECB supports the proposal that national authorities have the ability to set a counter-cyclical capital buffer that takes into account any financial and economic variables considered relevant for the assessment of excessive credit growth and the build-up of systemic risks. However, these variables should not be structural in nature as the counter-cyclical capital buffer should not aim at addressing structural risks in the financial system. Therefore, the ECB proposes that the inclusion of variables of a non-cyclical nature in the counter-cyclical capital buffer mechanism be withdrawn from the proposed directive[36].

8. *Liquidity*

8.1 The ECB welcomes the Commission's unequivocal commitment to introduce into Union legislation both a liquidity coverage requirement (LCR) and a net stable funding ratio (NSFR), in line with the Basel III agreements[37]. The introduction of a liquidity risk framework in the proposed legislation will yield substantial micro- and macro-prudential benefits. The liquidity requirements will increase credit institutions' liquidity buffers and lower maturity risk transformation, reducing excessive interconnectedness in the financial system and mitigating systemic liquidity risk. Moreover, harmonised liquidity risk rules should help to achieve a level playing field with sound liquidity risk management practices and have an overall welfare-enhancing effect on the European economy.

8.2 With regard to the proposed liquidity framework, the ECB would like to highlight the following points.

8.2.1 Regarding reporting on liquid assets, there are a number of overlaps between the items presented in the proposed regulation regarding 'Reporting on liquid assets'[38] and the items subject to supplementary reporting of liquid assets[39]. Accordingly, the ECB recommends the adoption of a single and transparent list of the items to be reported. As regards the treatment of shares or units in collective investment undertakings (CIUs) as liquid assets, it is important to limit the relative amount of these instruments in the total LCR, in addition to setting an absolute amount threshold of EUR 250 million, in order to limit concentration risks in small institutions[40].

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36 See Article 126(3)(c) and Article 126(4) of the proposed directive.

37 See recital 75 and 76 of the proposed regulation.

38 Article 404 of the proposed regulation.

39 Annex III of the proposed regulation.

40 Article 404(5) of the proposed regulation.

8.2.2 Central banks should be involved in determining the extent to which central bank reserves may count towards the stock of liquid assets in times of stress[41].

8.2.3 In view of the significant interaction expected between liquidity requirements and monetary policy operations, the ECB recommends being consulted by the EBA when developing a uniform definition of high quality assets as well as on the assessment by 31 December 2015 on how to ensure that institutions use stable sources of funding[42]. Despite the positive effects of liquidity regulation on monetary policy implementation, i.e. credit institutions' increased liquidity buffers and more stable funding reduce the share of persistent credit institutions in central bank operations, potential adverse effects could also arise, e.g. by lowering the average collateral liquidity and counterparty credit quality and impacting the smooth implementation of monetary policy.

8.2.4 The development of an adequate compliance framework for the LCR, i.e. rules on the use of the stock of liquid assets in a stress scenario and how competent authorities should react in case of a breach, is of particular importance. Given the relevance of the LCR both from the perspective of micro- and macro-prudential supervision, the ECB considers that the EBA, in cooperation with the ESRB, should be involved in formulating guidance on the possible release and subsequent build-up of the liquidity buffer in times of stress[43] .

8.3 Introduction of the NSFR[44] will ensure that credit institutions have stable funding to meet their obligations. One of the key problems that financial institutions faced in the crisis was the urgent funding need that resulted from a high degree of maturity mismatch. This implied a need to rely continuously on the roll-over of short-term liabilities in the wholesale money markets, resulting in funding problems that spilled over to the financial markets. In this regard, the ECB suggests drafting changes to avoid any possible ambiguity in the implementation of this requirement. While acknowledging that the design of the NSFR may warrant some fine-tuning, the long observation period lasting until 1 January 2018 is expected to provide the necessary time to further calibrate the ratio in order to avoid the risk of possible unintended consequences.

9. *Leverage*

The financial crisis clearly demonstrated the need to contain excessive leverage within the financial sector. The ECB therefore very much welcomes the Commission's commitment to introduce a non-risk based leverage ratio as a binding requirement, subject to appropriate review and calibration by making maximum use of the agreed review period[45]. Against this background, the ECB suggests clarifying in the proposed regulation the legislator's commitment to introducing this requirement[46].

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41 See in particular Articles 403 and 404 of and Annex III to the proposed regulation.

42 See Article 481 of the proposed regulation.

43 See Article 402 of the proposed regulation.

44 See recital 76 and Article 481(3) of the proposed regulation.

45 See recitals 64 to 70 of the proposed regulation.

46 See Article 482 of the proposed regulation.

10. *Supervisory reporting*

The supervisory reporting frameworks of financial reporting (FINREP) and common reporting (COREP) have been last developed by the Committee of European Banking Supervisors[47]. These frameworks are currently based on non-binding guidelines and reporting templates. In this context, the ECB recommends: (a) clarifying in the proposed regulation the COREP reporting framework; (b) introducing a clear legal basis for FINREP; and (c) further specifying the scope of the draft technical standards to be developed by the EBA in this field[48]. In particular, it is proposed that EBA and ESRB should cooperate to define the scope of financial information necessary for the purposes of macro-prudential oversight. With a view to collecting the information necessary for the performance of macro-prudential oversight tasks with regard to the reporting requirements related to large exposures, liquidity reporting and leverage ratio[49], the ECB also suggests introducing quarterly reporting at a minimum and involving the ESRB for the development of the draft implementing technical standards.

11. *Enhancement of information-sharing arrangements*

11.1 Whilst the recent reform of European financial supervision has already provided enhancements as regards information-sharing arrangements[50], the financial crisis has underlined the importance of ensuring appropriate information sharing arrangements between public authorities and in particular between central banks, including the ECB, and supervisory authorities. The ECB suggests reflecting the changes introduced by the supervisory reform in the proposed directive and further improving the exchange of information between supervisory authorities and ESCB central banks, including the ECB, when this information is relevant for the performance of their respective tasks[51]. The ECB would also recommend that the Commission, with the assistance of the relevant institutions and authorities (including the ECB, the ESRB and the EBA) undertake, within two years following the entry into force of the proposed directive, a full review of the effectiveness of these arrangements and, where appropriate, formulate proposals to further enhance this framework at Union level, taking in particular into account the significant information-related synergies between the central banking and the prudential supervisory functions, in both normal times and during times of stress[52].

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47 See the Committee of European Banking Supervisor's compendium of standards and guidelines, pp. 448-473.

48 See Article 94 of the proposed regulation.

49 Articles 383, 403 and 417 of the proposed regulation.

50 See Regulation (EU) No 1093/2010, Regulation (EU) No 1092/2010, Council Regulation (EU) No 1096/2010 of 17 November 2010 conferring specific tasks upon the European Central Bank concerning the functioning of the European Systemic Risk Board (OJ L 331, 15.12.2010, p. 162).

51 See, for instance, paragraphs 13 to 15 of Opinion CON/2009/17, paragraph 2.2 of ECB Opinion CON/2010/23 of 18 March 2010 on a proposal for a Directive of the European Parliament and of the Council amending Directives 1998/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC, and 2009/65/EC in respect of the powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority (OJ C 87, 1.4.2010, p. 1) and paragraph 5 of Opinion CON/2011/42.

52 See paragraph 15 of Opinion CON/2019/17.

11.2 The ECB also recommends an in-depth assessment by the Commission, based on a report of the EBA, of the application of the proposed directive and regulation with regard to Union and Member State cooperation with third countries. Taking into account lessons drawn from the financial crisis, such review would identify lacunae and assess areas requiring further enhancements of cooperation, information sharing and reciprocity arrangements, including enforcement of supervisory rules in third countries. This assessment should also include the need to further improve cooperation agreements between Member States and the EBA on the one hand and international financial institutions or bodies such as the International Monetary Fund (IMF) or the Financial Stability Board on the other hand.

More specifically, the ECB also recommends a full review of the provisions of the proposed directive relating to the conditions of access for branches of institutions established in third countries in order to improve the harmonisation of rules within Member States governing the establishment of branches of credit institutions having their head office outside the Union and to ensure the cross-sectoral consistency of Union financial services legislation[53].

12. *Other issues*

Various other issues related to: (a) cooperation between competent authorities for supervision and oversight of central counterparties; (b) supervisory powers; (c) governance issues; (d) rules and terminology applicable to external credit assessment institutions (ECAIs); (e) securitisation, are also addressed in the Annex to the opinion and give rise to specific proposed amendments.

Where the ECB recommends that the proposed directive and regulation are amended, specific drafting proposals are set out in the Annex accompanied by explanatory text to this effect.

Done at Frankfurt am Main, 25 January 2012.

The Vice-President of the ECB

Vítor CONSTÂNCIO

53 See for example the proposal for a Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (COM(2011) 656 final).

Annex

Drafting proposals for the proposed directive

Text proposed by the Commission	Amendments proposed by the ECB[1]
Amendment 1 Recital 3 of the proposed directive	
'(3) The general prudential requirements laid down in Regulation [inserted by OP] are supplemented by individual arrangements to be decided by the competent authorities as a result of their ongoing supervisory review of each individual credit institution and investment firm. The range of such supervisory arrangements should be set out in this Directive and the competent authorities should be able to exert their judgment as to which arrangements should be imposed. With regard to such individual arrangements concerning liquidity, competent authorities should take into account the principles set out in the guidelines on liquidity published by the Committee of European Banking Supervisors [*footnote*].'	'(3) The general prudential requirements laid down in Regulation [inserted by OP] are supplemented by individual arrangements to be decided by the competent authorities as a result of their ongoing supervisory review of each individual credit institution and investment firm. The range of such supervisory arrangements should be set out in this Directive and the competent authorities should be able to exert their judgment as to which arrangements should be imposed. ~~With regard to such individual arrangements concerning liquidity, competent authorities should take into account the principles set out in the guidelines on liquidity published by the Committee of European Banking Supervisors [*footnote*]~~.'
<u>Explanation</u> *The ESAs replace the Lamfalussy Level 3 committees and assume all of the tasks and responsibilities of those committees including the continuation of on-going work and projects, e.g. recital 10 and Article 8(1)(l) of Regulation (EU) No 1093/2010. Therefore, the reference to these guidelines in the recital should be deleted.*	
Amendment 2 Article 2(4) of the proposed directive (new)	
No text.	**'4. EBA shall develop draft regulatory technical**

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

<table>
<tr><td></td><td>standards to further define the criteria for including an institution on the list in paragraph 3 and for the types of cases that can be covered by national legislation as referred to in Article 3(2).

Power is delegated to the Commission to adopt the draft regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.'</td></tr>
<tr><td colspan="2"><u>Explanation</u>

Currently, it is not possible to determine the criteria by which the entities listed in Article 2(3) of the proposed directive are selected. In order to reduce national options and discretion, the ECB proposes that EBA develop objective criteria against which it can be assessed in future amendments to the proposed directive whether the list contained in Article 2(3)(3) to (22) should be amended. One suggestion is to apply the same procedure to the types of cases covered under Article 3(2) of the proposed directive. This amendment should be read in conjunction with Article 136(a) of the proposed directive, which gives the Commission the power to make technical adjustments to the list in Article 2 of the proposed directive.</td></tr>
<tr><td colspan="2">Amendment 3

Article 7 of the proposed directive</td></tr>
<tr><td>'Article 7

Cooperation with EBA

In the exercise of their duties, the competent authorities shall take into account the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to this Directive. For that purpose, Member States shall ensure that:

(a) the competent authorities participate in the activities of EBA;

(b) competent authorities make every effort to comply with those guidelines and</td><td>'Article 7

Cooperation with EBA and within the European System of Financial Supervision (ESFS)

In the exercise of their duties, the competent authorities shall take into account the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to this Directive and Regulation [inserted by OP]. For that purpose, Member States shall ensure that:

(a) competent authorities, as parties to the ESFS, cooperate with trust and full mutual respect, in particular when ensuring the flow of appropriate and reliable information</td></tr>
</table>

recommendations issued by EBA in accordance with Article 16 of Regulation (EU) No. 1093/2010; (c) national mandates conferred on the competent authorities do not inhibit the performance of their duties as members of EBA or under this Directive and Regulation [inserted by OP].’	**between them and other parties to the ESFS in accordance with the principle of sincere cooperation pursuant to Article 4(3) of the Treaty on European Union;** ~~(a)~~**(b)** ~~the~~ competent authorities participate in the activities of EBA **and, as appropriate, in the colleges of supervisors**; ~~(b)~~**(c)** competent authorities make every effort to comply with those guidelines and recommendations issued by EBA in accordance with Article 16 of Regulation (EU) No 1093/2010**, and with the warnings and recommendations issued by the ESRB pursuant to Article 16 of Regulation (EU) No 1092/2010**; **(d) competent authorities cooperate closely with the ESRB;** ~~(c)~~**(e)** national mandates conferred on the competent authorities do not inhibit the performance of their duties as members of EBA**, of the ESRB where appropriate** or under this Directive and Regulation [inserted by OP].’
<u>*Explanation*</u> *For the sake of clarity and legal certainty, the amendments will ensure that the proposed directive reflects the principles of cooperation set out in Regulation (EU) No 1092/2010*[2]*, Regulation (EU) No 1096/2010 and in the Regulations establishing the ESAs. The ECB recommends introducing similar amendments in other relevant financial sector directives as appropriate.*	
Amendment 4 Article 8 of the proposed directive	
‘Article 8	‘Article 8

2 Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, (OJ L 331, 15.12.2010, p. 1).

<table>
<tr><td>European dimension of supervision

The competent authorities in one Member State shall, in the exercise of their general duties, duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned and, in particular, in emergency situations, based on the information available at the relevant time.’</td><td>European dimension of supervision

The competent authorities in one Member State shall, in the exercise of their general duties, duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned and, in particular, in emergency situations, based on the information available at the relevant time, taking into account the need to improve the functioning of the internal market and to enhance the integration of European financial markets.’</td></tr>
<tr><td colspan="2"><u>Explanation</u>

The proposed amendment aims at further clarifying the objectives to be pursued by competent authorities as regards the European dimension of their activities. Recital 42 of the proposed directive should also be amended accordingly.</td></tr>
<tr><td colspan="2">Amendment 5

Articles 49 to 51 of the proposed directive</td></tr>
<tr><td>‘Title VII

Prudential supervision

Chapter 1

Principles of prudential supervision

SECTION I

COMPETENCE OF HOME AND HOST MEMBER STATE

Article 49

Competence of control of the home Member State

1. The prudential supervision of an institution, including that of the activities it carries on in accordance with Articles 33 and 34, shall be the responsibility of the competent authorities of the home Member State, without prejudice to those provisions of this Directive which give responsibility to the competent</td><td>‘Title VII

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Chapter 1

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</table>

authorities of the host Member State.	host Member State.
2. Paragraph 1 shall not prevent supervision on a consolidated basis.	2. Paragraph 1 shall not prevent supervision on a consolidated basis.
Article 50	~~Article 50~~
Competence of the host Member State	~~Competence of the host Member State~~
Measures taken by the host Member State may not provide for discriminatory or restrictive treatment based on the fact that an institution is authorised in another Member State.	~~Measures taken by the host Member State may not provide for discriminatory or restrictive treatment based on the fact that an institution is authorised in another Member State.~~’
Article 51	Article 5~~1~~**0**
Collaboration concerning supervision	~~Collaboration concerning supervision~~ **Cooperation between home and host Member State**
[…]’	[…]**’**

<u>*Explanation*</u>

Article 50 of the proposed directive replicates the third paragraph of Article 41 of Directive 2006/48/EC. This third paragraph refers to the second paragraph of Article 41, which addresses supervision of liquidity of branches and the measures which could be taken by host Member States resulting from the implementation of their monetary policies[3]*. This third paragraph, which is obsolete since it referred to the above measures, should be also removed as was done for the first and second paragraphs of the same Article of Directive 2006/48/EC*[4].

The proposed amendment is aimed at improving legal clarity with respect to the roles of home and host authorities in the titles of the above provisions. First, Article 49(1) sets out the principle of the competence of the home Member State. This is without prejudice to the provisions of the proposed directive that give responsibility to the competent authorities of the host Member State. Therefore, the reference to the competence of the host Member State in the title of Article 50 is misleading since this aspect is already addressed in the previous article. Second, Article 50 is unnecessary as the principle of non-discrimination arises out of the provisions of the Treaty itself.

Amendment 6

Article 54(2) of the proposed directive

‘2. Paragraph 1 shall not prevent the competent	‘2. Paragraph 1 shall not prevent the competent

3 See in this respect paragraph 11 of Opinion CON/2009/17 and its Amendment 3.

4 See in this respect in the transitional provisions of Article 145 of the proposed directive.

<table>
<tr><td>authorities of the various Member States from exchanging information or transmitting information to EBA in accordance with this Directive, Regulation [inserted by OP], with other Directives applicable to credit institutions, and with Articles 31 and 35 of Regulation (EU) No 1093/2010. That information shall be subject to the conditions relating to professional secrecy set out in paragraph 1.’</td><td>authorities of the various Member States from exchanging information or transmitting information to EBA in accordance with this Directive, Regulation [inserted by OP], with other Directives applicable to credit institutions, and with Articles 31, ~~and~~ 35 and 36 of Regulation (EU) No 1093/2010 and Article 15 of Regulation (EU) No 1092/2010. That information shall be subject to the conditions relating to professional secrecy set out in paragraph 1.’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The proposed amendment clarifies that the competent authorities and the EBA may transmit to the ESRB all the information necessary for the the ESRB to perform its tasks in accordance with the conditions set out in Article 36 of Regulation (EU) No 1092/2010 and Article 15 of Regulation (EU) No 1093/2010. The ECB recommends introducing similar amendments in other relevant financial sector directives, as appropriate.</td></tr>
<tr><td colspan="2">Amendment 7
Article 59 of the proposed directive</td></tr>
<tr><td>‘Article 59
Transmission of information concerning monetary, systemic and payment aspects
1. Nothing in this Chapter shall prevent a competent authority from transmitting information to the following for the purposes of their tasks:
[…]
4. In an emergency situation as referred to in Article 109(1), Member States shall allow the competent authorities to communicate, without delay […]. ’</td><td>‘Article 59
Transmission of information concerning monetary, systemic and payment aspects
1. ~~Nothing in this Chapter shall prevent a~~ Member States shall take the appropriate measures to remove obstacles preventing competent authorit~~y~~ies from transmitting information to the following for the purposes of their respective tasks:
[…]
4. Member States shall take the necessary measures to ensure that, ~~I~~in an emergency situation as referred to in Article 109(1), ~~Member States shall~~ ~~allow~~ the competent authorities ~~to~~ communicate, without delay […]. ’</td></tr>
<tr><td colspan="2"><u>Explanation</u></td></tr>
</table>

<table>
<tr><td colspan="2">The financial crisis has confirmed that it is of the utmost importance to ensure appropriate information-sharing arrangements between public authorities and in particular between central banks and supervisory authorities. Therefore, the ECB suggests further improving methods for the exchange of information between supervisory authorities and central banks of the ESCB, including the ECB, relating to the information relevant to the performance of their statutory tasks, especially in emergency situations (see also Amendment 12).</td></tr>
<tr><td colspan="2">Amendment 8
Article 64 of the proposed directive</td></tr>
<tr><td>‘For the purposes of Article 99 and the application of Regulation [inserted by OP], competent authorities shall have at least the following powers:
[…].’</td><td>‘For the purposes of Article 99 and the application of Regulation [inserted by OP], competent authorities shall have at least the following powers:
[…]
(k) to remove one or more members of the management body, where they do not fulfil the requirements imposed under Article 87.’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The proposed amendment is aimed at ensuring that national laws entitle competent authorities to take appropriate measures, including the removal of members of the management body and main directors who do not fulfil the requirements defined in Article 87 of the proposed directive, in line with international standards[5].</td></tr>
<tr><td colspan="2">Amendment 9
Article 67(1) of the proposed directive</td></tr>
<tr><td>‘1. This Article shall apply in all the following circumstances:
[…].’</td><td>‘1. This Article shall apply in all the following circumstances:
[…]
(n) an institution has been found liable for a serious infringement of the national provisions adopted pursuant to</td></tr>
</table>

5 See, for instance, Basel Committee on Banking Supervision, Core Principles Methodology, October 2006, p. 38.

<table>
<tr><td></td><td>Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing [footnote]'.</td></tr>
<tr><td colspan="2"><u>Explanation</u>
Competent authorities should have the possibility to withdraw the authorisation of an institution pursuant to Article 18(f) of the proposed directive, where it has committed serious infringements of the Union rules on the prevention of money laundering and terrorist financing.</td></tr>
<tr><td colspan="2">Amendment 10
Article 75(5) of the proposed directive</td></tr>
<tr><td>'5. […]
The risk management function shall be able to report directly to the management body in its supervisory function when necessary, independent from senior management.
The head of the risk management function shall be an independent senior executive with distinct responsibility for the risk management function.
[…].'</td><td>'5. […]
The risk management function shall be able to report directly to the management body in its supervisory function when necessary, independent from senior management and to raise concerns and warn this body, where appropriate, in case of specific risk developments that affect or may affect the institution, without prejudice to the responsibilities of the management body in both its supervisory and/or managerial functions pursuant to this Directive and Regulation [inserted by OP].
The head of the risk management function shall be an independent senior executive with distinct responsibility for the risk management function.
[…].'</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The ECB recommends this proposed amendment in order to further specify that the risk management function includes the task of raising concerns and warning the management body in its supervisory capacity in case of developments regarding an institution's risk exposures.</td></tr>
</table>

Amendment 11 Article 87 of the proposed directive	
'Article 87 Management body 1. Competent authorities shall require that all members of the management body of any institution shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties. Members of the management body shall, in particular, fulfil the following requirements: […] (b) The management body shall possess adequate collective knowledge, skills and experience to be able to understand the institution's activities, including the main risks. […] 5. EBA shall develop draft regulatory technical standards to specify the following: […] (b) the notion of adequate collective knowledge, skills and experience of the management body as referred to in paragraph 1(b); […].'	'Article 87 Management body 1. Competent authorities shall require that all members of the management body of any institution shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties. Members of the management body shall, in particular, fulfil the following requirements: […] (b) The management body shall possess **individually and collectively** adequate ~~collective~~ knowledge, skills and experience to be able to understand the institution's activities, including the main risks. […] 5. EBA shall develop draft regulatory technical standards to specify the following: […] (b) the notion of adequate **individual and** collective knowledge, skills and experience of the management body as referred to in paragraph 1(b); […].'
<u>*Explanation*</u> *The amendment is aimed at ensuring that not only the management body collectively, but also each individual member of the management body has the appropriate knowledge and required skills (see paragraph 5.1 of the Commission's Green Paper on Corporate governance in financial institutions and remuneration policies[6]). In this respect, it is proposed that the EBA should also be entrusted with the task*	

6 COM(2010) 284 final.

<table>
<tr><td colspan="2">of developing draft regulatory technical standards to specify the notion of adequate individual knowledge, skills and experience of members of the management body.</td></tr>
<tr><td colspan="2" align="center">Amendment 12

Article 109(1) of the proposed directive</td></tr>
<tr><td>‘1. Where an emergency situation, including a situation as defined in Article 18 of Regulation (EU) No 1093/2010 or a situation of adverse developments in markets, arises, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member State where entities of a group have been authorised or where significant branches referred to in Article 52 are established, the consolidating supervisor shall, subject to Chapter 1, Section 2, and where applicable Articles 54 and 58 of Directive 2004/39/EC, alert as soon as is practicable, EBA, ESRB and the authorities referred to in Article 59(4) and in Article 60 and shall communicate all information essential for the pursuance of their tasks. Those obligations shall apply to all competent authorities if the authority referred to in Article 59(4) becomes aware of a situation described in the first subparagraph, it shall alert as soon as is practicable the competent authorities referred to in Article 107, and EBA.

Where possible, the competent authority and the authority referred to in Article 59(4) shall use existing defined channels of communication.’</td><td>1. Where an emergency situation, including a situation as defined in Article 18 of Regulation (EU) No 1093/2010 or a situation of adverse developments in markets, arises, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member States where entities of a group have been authorised or where significant branches referred to in Article 52 are established, the consolidating supervisor shall, subject to Chapter 1, Section 2, and where applicable Articles 54 and 58 of Directive 2004/39/EC, alert as soon as is practicable, EBA, ESRB, central banks and the authorities referred to <s>in Article 59(4) and</s> in Article 60 and shall communicate all information <s>essential</s> relevant for the pursuance of their tasks. <s>Those obligations shall apply to all competent authorities i</s>If a central bank or the ESRB <s>authority referred to in Article 59(4)</s> becomes aware of a situation described in the first subparagraph, it shall alert as soon as is practicable the competent authorities referred to in Article 107, and EBA.

Where possible, the competent authorit<s>y</s>ies, <s>and the authority referred to in Article 59(4)</s> central banks and the ESRB shall use existing defined channels of communication.’</td></tr>
<tr><td colspan="2"> <u>Explanation</u> As pointed out in Amendments 4 and 5 of Opinion CON/2009/17, the proposed amendments aim to clarify the notion of ‘authorities’ in this Article. In particular, it is important to make it clear that the authorities referred to in Article 59(4) correspond to central banks and to the ESRB and not to competent</td></tr>
</table>

authorities. Cross-references throughout the text to this notion of 'authorities' should be avoided in order to facilitate the reading of the proposed directive and to bring further legal certainty.

The other proposed amendments aim to clarify the nature of information to be transmitted, in line with Article 59 of the proposed directive. In particular, transmitted information should not only be defined as 'essential' information, but should also include any 'relevant' information for the performance of central banks' and the ESRB's tasks[7].

Amendment 13

Article 126(4) of the proposed directive

'4. The variables referred to in point (c) of paragraph 3 may include […].'	~~'4. The variables referred to in point (c) of paragraph 3 may include […].~~'

<u>*Explanation*</u>

Reference is made to paragraph 7 of the opinion. The proposed amendment (deletion of paragraph of Article 126 of the proposed directive) will eliminate the structural element from the counter-cyclical capital buffer, aligning the proposed directive with the operational features of the Basel III agreement. In this context, Article 126(8)(h) of the proposed directive should be deleted accordingly as should the reference to 'structural variables' in recital 58 of the proposed directive as well as the second and third sentences of recital 60 of the proposed directive.

Amendment 14

Article 149(6) of the proposed directive

'6. Member States may impose a shorter transitional period than that specified in paragraph 1 where that is justified by excessive credit growth at any time during that period. Where a Member States does so, the shorter period shall apply only for the purposes of the calculation of the institution specific Countercyclical Capital Buffer by institutions that are authorised in the Member State for which the designated authority is responsible.'	'6. Member States may impose a shorter transitional period than that specified in paragraph 1 **for the implementation of the capital conservation buffer and the counter-cyclical capital buffer** where that is justified by excessive credit growth at any time during that period. Where a Member State~~s~~ does so, the shorter period ~~shall apply only for the purposes of the calculation of the institution specific Countercyclical Capital Buffer by institutions that are authorised in the Member State for which the designated authority is~~

7 See also Amendment 5 of Opinion CON/2009/17.

	~~responsible.~~ **set for the counter-cyclical capital buffer may be recognised by other Member States for the purposes of the calculation by domestically authorised institutions of their institution specific counter-cyclical capital buffer requirement.**'
Explanation *Member States experiencing excessive credit growth during the transition period as specified in Article 149(1) of the proposed directive may consider accelerating the build-up of the capital conservation buffer and the counter-cyclical capital buffer*[8]. *To avoid regulatory arbitrage, other Member States should be allowed to recognise the early application of the counter-cyclical capital buffer.*	
Amendment 15 Article 150(5) of the proposed directive (new)	
No text.	'**5. By 31 December 2014, the Commission shall consult the ESAs, the ESCB, the ESRB and other relevant parties to review the effectiveness of information-sharing arrangements under this Directive, in particular under Title VII, Chapter 1, Section 2 and will formulate proposals, as appropriate, to further develop these provisions and/or arrangements, in particular, taking into account the significant information-related synergies between the central banking and the prudential supervisory functions, both in normal times and during times of stress.**'
Explanation *See paragraph 11 of the opinion.*	

8 Paragraphs 133 and 150 of the Basel III agreement.

Amendment 16 Article 150(6) of the proposed directive (new)	
No text.	‘6. **By 31 December 2014, EBA shall review and report on the application of the provisions in this Directive and Regulation [inserted by OP], on the cooperation of the Union and Member States with third countries. That review shall identify any lacunae and assess the areas which require further development as regards cooperation, information sharing and reciprocity arrangements, including enforcement of supervisory rules in third countries.** **EBA shall also assess the need to further develop cooperation agreements between Member States and EBA on the one hand and international financial institutions or bodies such as the IMF or the Financial Stability Board on the other hand.** **The Commission shall examine the assessment contained in the EBA report to determine whether legislative proposals are necessary.**’
<u>*Explanation*</u> *To ensure effective cooperation and information sharing between Union and Member States authorities with authorities from third countries, to ensure the enforcement of supervisory rules in these countries and taking also into account the report established under Article 33 of Regulation (EU) No 1093/2010, it is necessary that EBA thoroughly examines and reports on this matter by 31 December 2014. This report should also cover the aspects related to the cooperation and information sharing arrangements with international financial institutions. Based on the issues identified by this report, the Commission will assess whether a legislative proposal is necessary in order to improve this framework.*	
Amendment 17 Article 150(7) of the proposed directive (new)	
No text.	‘7. **Upon receiving a mandate from the**

	Commission, EBA shall explore whether financial sector entities which declare that they carry out their activities in accordance with Islamic banking principles are adequately covered by the provisions of this Directive and Regulation [inserted by OP]. **The Commission shall review the report prepared by EBA and if appropriate submit a legislative proposal to the European Parliament and the Council.**'

<u>*Explanation*</u>

In view of the recent growth in the number of financial sector entities in Europe carrying out their activities in accordance with Islamic banking principles, the ECB recommends that the EBA be entrusted with the task of undertaking a full review of this type of financial activity and examining the need for appropriate adjustments of the Union banking framework.

Drafting proposals of the proposed regulation

<table>
<tr><th>Text proposed by the Commission</th><th>Amendments proposed by the ECB[1]</th></tr>
<tr><td colspan="2">Amendment 1
Preamble of the proposed regulation (new citation)</td></tr>
<tr><td>‘Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,
Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national Parliaments,
Having regard to the opinion of the European Economic and Social Committee,
Acting in accordance with the ordinary legislative procedure,’</td><td>‘Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,
Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national Parliaments,
Having regard to the opinion of the European Central Bank,
Having regard to the opinion of the European Economic and Social Committee,
Acting in accordance with the ordinary legislative procedure,’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
In accordance with Article 296 of the Treaty, which provides that legal acts shall refer to any opinions required by the Treaties, the proposed amendment is necessary in order to reflect the fact that the Union act is adopted in accordance with Articles 127(4) and 282(5) of the Treaty which provide for the obligation to consult the ECB on any proposed Union act falling within its fields of competence.</td></tr>
<tr><td colspan="2">Amendment 2
Recital 16a of the proposed regulation (new)</td></tr>
<tr><td>No text.</td><td>‘(16a) The report from the High Level Group on Financial Supervision in the European Union, chaired by Jacques de Larosière,</td></tr>
</table>

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

	stated that micro-prudential supervision cannot effectively safeguard financial stability without adequately taking account of macro-level developments, while macro-prudential oversight is not meaningful unless it can somehow impact on supervision at the micro level. **Close cooperation between EBA and the ESRB is essential to give full effectiveness to the functioning of the ESRB and the follow-up to its warnings and recommendations. In particular, EBA should be able to transmit to the ESRB all relevant information gathered by competent authorities in accordance with the reporting obligations set out in this Regulation.'**

<u>*Explanation*</u>

The proposed recital addresses the importance of macro-prudential oversight across the Union and clarifies that information subject to reporting requirements has both micro- and macro-prudential purposes. An identical recital could be introduced in the proposed directive.

Amendment 3

Recital 56a of the proposed regulation (new)

No text.	**'(56a) An important lesson stemming from the crisis is the need to significantly strengthen the loss absorption capacity of regulatory capital. With this aim, the Basel III agreement requires with respect to joint stock companies that, "for an instrument to be included in Common Equity Tier 1 capital, it must meet all the criteria defined in the agreement and the criteria must be met solely with common shares". The Regulation implements these strict criteria in order "to cover the highest quality own funds instruments for**

<table>
<tr><td></td><td>internationally active banks that are joint stock companies”.’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The proposal aims at underlining the relevant provisions of the Basel III agreement with respect to the eligibility criteria for shares as common equity tier 1 instruments (see also Amendments 6, 7, 8 and 9).</td></tr>
<tr><td colspan="2">Amendment 4
Recital 68 of the proposed regulation</td></tr>
<tr><td>‘(68) A leverage ratio is a new regulatory and supervisory tool for the Union. In line with international agreements, it should be introduced first as an additional feature that can be applied on individual institutions at the discretion of supervisory authorities. Reporting obligations for institutions would allow appropriate review and calibration, with a view to migrating to a binding measure in 2018.’</td><td>‘(68) A leverage ratio is a new regulatory and supervisory tool for the Union, ~~. I~~n line with ~~international agreements~~ the Basel III agreement. I~~i~~t should be introduced first as an additional feature that can be applied on individual institutions at the discretion of supervisory authorities. Reporting obligations for institutions would allow appropriate review and calibration, ~~with a view~~ in order to ~~migrating to a binding measure~~ ensure the compulsory application of the leverage ratio from ~~in~~ 2018.’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
This amendment clarifies that the leverage ratio will apply from 1 January 2018.</td></tr>
<tr><td colspan="2">Amendment 5
Article 4 of the proposed regulation (new definitions)</td></tr>
<tr><td>No text.</td><td>‘“External Credit Assessment Institution” (ECAI) means a credit rating agency that is registered or certified in accordance with Regulation (EC) No 1060/2009 or a central bank issuing credit ratings which are exempt from the application of Regulation (EC) No 1060/2009.’
‘“Nominated ECAI” means an ECAI nominated by an institution.’</td></tr>
</table>

<u>*Explanation*</u>

For the sake of clarity, the proposed amendment defines 'ECAI' and 'nominated ECAI' and adds them to the list of definitions of the proposed regulation and directive. Since Regulation (EC) No 1060/2009[2] *defines ECAIs as all credit rating agencies that have been registered or certified in accordance with Regulation (EC) No 1060/2009 or central banks issuing credit ratings which are exempt from Regulation (EC) No 1060/2009, there is no need to define 'eligible' and/or 'recognised' ECAIs in the proposed regulation and directive. For the same reason, the other provisions refer to these terms should be amended accordingly. For the sake of cross-sectoral consistency, the ECB also recommends ensuring that the provisions correspond to those in the proposal for a Directive of the European Parliament and of the Council amending Directives 2003/71/EC and 2009/138/EC in respect of the powers of the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority*[3] *under discussion which relate to ECAIs. This also applies to the rules related to the mapping of ECAI's credit assessment and the possibility of involving the Joint Committee of ESAs*[4].

Amendment 6

Article 24(4) of the proposed regulation

'4. EBA shall establish, maintain and publish a list of the forms of capital instrument in each Member State that qualify as Common Equity Tier 1 instruments. EBA shall establish and publish this list by 1 January 2013.'	'4. **Competent authorities shall notify** EBA ~~shall establish, maintain and publish a list~~ ~~of the~~ ~~forms of capital instrument in each Member State that~~ ~~qualify~~ of **the forms of shares they deem eligible** as Common Equity Tier 1 instruments **according to their national law** ~~as Common Equity Tier 1 instruments~~. EBA shall **evaluate these forms of shares on an on-going basis and develop a draft list of the forms of shares in each Member State that qualify as Common Equity Tier 1 instruments in accordance with paragraph 5** ~~establish and publish this list by 1 January 2013~~. **Upon a Member State's request or on its own initiative, the EBA may decide to**

2 Regulation (EC) No 1060/2009 of the European Parliament and the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1).

3 COM (2011) 8 final.

4 See paragraph 6.4 of Opinion CON/2011/42.

	request legal opinions in order to ascertain the eligibility of the forms of shares notified by Member States against the conditions defined in Article 26.'

Explanation

EBA should be competent to evaluate the forms of shares deemed eligible as common equity tier 1 instruments on the basis of the information received from competent authorities and in accordance with the rules defined in the proposed regulation, in particular Article 26(1) of the proposed regulation. For this purpose, EBA may also request external legal opinions to assess the eligibility of certain notified forms of shares by Member States.

Amendment 7

Article 24(5) and (6) of the proposed regulation (new)

No text.	'**5. EBA shall develop draft implementing technical standards listing the forms of shares meeting the conditions defined in Article 26.** **EBA shall submit the draft implementing technical standards to the Commission by 1 January 2013.** **Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.** **6. Only the forms of shares included in the implementing act adopted by the Commission in accordance with paragraph 5 shall be considered eligible as Common Equity Tier 1 instruments.** **Competent authorities shall monitor compliance with the conditions for Common Equity Tier 1 capital defined in Chapter 2 on an ongoing basis.**'

Explanation

EBA should be competent to evaluate the forms of shares eligible as common equity tier 1 instruments on

the basis of the information received from competent authorities and in accordance with the rules defined in the proposed regulation, in particular Article 26(1).The ECB proposes that the draft list established by EBA be converted into a Commission implementing act.	
Amendment 8 Article 26(1) of the proposed regulation	
'1. Capital instruments shall qualify as Common Equity Tier 1 instruments only if all the following conditions are met: […].'	'1. Capital instruments **issued by other institutions than those referred to in Article 27** shall **consist of shares of undertakings referred to in the list in Article 24(4) and** qualify as Common Equity Tier 1 instruments only if all the following conditions are met: […].'
<u>*Explanation*</u> *The proposed regulation refers to 'capital instruments' as components of common equity tier 1 items. The Basel III agreement refers to 'common shares' as a predominant form of common equity tier 1 capital. The ECB recommends clarifying that common equity tier 1 instruments will consist solely of shares meeting the criteria in Article 26(1) of the proposed regulation.*	
Amendment 9 Article 26(3) of the proposed regulation	
'3. EBA shall develop draft regulatory technical standards to specify the following: (a) the applicable forms and nature of indirect funding of capital instruments; (b) the meaning of distributable items for the purposes of determining the amount available to be distributed to the holders of own funds instruments of an institution.'	'3. EBA shall develop draft regulatory technical standards to specify the following: (a) the applicable forms and nature of indirect funding of capital instruments; (b) the meaning of distributable items for the purposes of determining the amount available to be distributed to the holders of own funds instruments of an institution~~.~~**;** **(c) the meaning of preferential distributions;** **(d) the definition and implications of 'absorbing the first and**

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proportionately greatest share of losses as they occur';

(e) the nature of a cap or other restriction on the maximum level of distributable items. '

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<u>*Explanation*</u>

The ECB considers that the EBA should develop draft regulatory technical standards in the above areas to improve the harmonised application of the criteria for eligibility of shares as common equity tier 1 items across Member States.

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Amendment 10

Article 46 of the proposed regulation

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'Article 46

Other exemptions from, and alternatives to, deduction where consolidation is applied

1. As an alternative to the deduction of holdings of an institution in the Common Equity Tier 1 instruments of insurance undertakings, reinsurance undertakings and insurance holding companies in which the institution has a significant investment, competent authorities may allow institutions to apply methods 1, 2 or 3 of Annex I to Directive 2002/87/EC. The institution shall apply the method chosen in a consistent manner over time. An institution may apply method 1 (accounting consolidation) only if it has received the prior consent of the competent authority. The competent authority may grant such consent only if it is satisfied that the level of integrated management and internal control regarding the entities that would be included in the scope of consolidation under method 1 is adequate.

[…]

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'Article 46

Other exemptions from, and alternatives to, deduction where consolidation is applied

1. As an alternative to the deduction of holdings of an institution in the Common Equity Tier 1 instruments of insurance undertakings, reinsurance undertakings and insurance holding companies in which the institution has a significant investment, competent authorities may allow institutions to apply methods 1, 2 or 3 of Annex I to Directive 2002/87/EC, **provided that the application of these methods does not result in higher own funds vis-à-vis the deduction approach at the level of the institutions and financial institutions referred to in Article 16**. The institution shall apply the method chosen in a consistent manner over time. An institution may apply method 1 (accounting consolidation) only if it has received the prior consent of the competent authority. The competent authority may grant such consent only if it is satisfied that the level of integrated management and internal control regarding the entities that would be included in

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	the scope of consolidation under method 1 is adequate. […]
3. Competent authorities may permit institutions not to deduct a holding of an item referred to in points (h) and (i) of Article 33 (1) in the following cases: (a) where the holding is in a relevant entity which is included in the same supplementary supervision as the institution in accordance with Directive 2002/87/EC; (b) where an institution referred to in Article 25 has a holding in another such institution, or in its central or regional credit institution, and the following conditions are met: […].'	3. Competent authorities may permit institutions not to deduct a holding of an item referred to in points (h) and (i) of Article 33 (1) in the following cases: (a) where the holding is in a relevant entity which is included in the same supplementary supervision as the institution in accordance with Directive 2002/87/EC; (b) **where the alternative to deduction does not result in higher own funds vis-à-vis the deduction approach at the level of the institutions and financial institutions referred to in Article 16;** **(c)** where an institution referred to in Article 25 has a holding in another such institution, or in its central or regional credit institution, and the following conditions are met: […].'

<u>*Explanation*</u>

The ECB understands that eliminating the double use of regulatory own funds at the sectoral level (by deducting significant investments in insurance undertakings) and determining additional own funds requirements at the level of the financial conglomerate (by using one of the three methods as laid down in Annex I to Directive 2002/87/EC) are not mutually exclusive. As a consequence, any alternative to the deduction approach as agreed by the GHOS should not result in higher regulatory own funds at the level of the group of institutions and financial institutions as referred to in Article 16 of the proposed regulation.

Amendment 11

Article 95 of the proposed regulation

'Article 95	'Article 95

Reporting on own funds requirements 1. Institutions that calculate own funds requirements for position risk shall report these own funds requirements at least every 3 months. This reporting shall include financial information drawn up in accordance with the accounting framework to which the institution is subject under Regulation (EC) No 1606/2002 and Directive 86/635/EEC to the extent this is necessary to obtain a comprehensive view of the risk profile of an institution's activities. Reporting by institutions on the obligations laid down in 87 shall be carried out at least twice each year. Institutions shall communicate the results and any component data required to the competent authorities. 2. EBA shall develop draft implementing technical standards to specify the uniform formats, frequencies and dates of reporting and the IT solutions to be applied in the Union for such reporting. The reporting formats shall be proportionate to the nature, scale and complexity of the activities of the institutions. EBA shall submit those draft implementing technical standards to the Commission by 1 January 2013. Power is delegated to the Commission to adopt the implementing standards referred to in the first sub-paragraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1093/2010.'	Reporting on own funds requirements **and financial information** 1. **Reporting by institutions on the obligations laid down in Article 87 shall be carried out at least on a quarterly basis** ~~Institutions that calculate own funds requirements for position risk shall report these own funds requirements at least every 3 months~~. **1a.** This reporting shall **also** include financial information drawn up in accordance with the accounting framework to which the institution is subject under Regulation (EC) No 1606/2002 and Directive 86/635/EEC to the extent **that** ~~this is~~**:** **(a) EBA considers this information** necessary to obtain a comprehensive view of the risk profile of an institution's activities**;** **(b) EBA, in cooperation with the ESRB, considers this information necessary for the performance of macro-prudential oversight tasks, in accordance with Regulation (EU) No 1092/2010 and Regulation (EU) No 1093/2010.** ~~Reporting by institutions on the obligations laid down in 87 shall be carried out at least twice each year.~~ Institutions shall communicate the results and any component data required to the competent authorities **in a timely manner**. 2. EBA shall develop draft implementing technical standards to specify the **definitions, classification criteria,** uniform formats, frequencies and dates of reporting and the IT solutions to be applied in the Union for such reporting. The reporting formats **and frequency**

	shall be proportionate to the nature, scale and complexity of the activities of the institutions. **EBA shall consult the ESRB on the development of draft implementing technical standards related to the information referred to in paragraph 1a(b).** EBA shall submit those draft implementing technical standards to the Commission by 1 January 2013. Power is delegated to the Commission to adopt the implementing standards referred to in the first sub-paragraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1093/2010.'

<u>Explanation</u>

This amendment clarifies the current legal basis for the adoption of the COREP reporting formats and introduces a legal basis for FINREP reporting formats[5]*. Moreover, the ECB recommends that reporting take place on a quarterly basis, within two months after the quarter in reference to ensure better information flow. It should also be clarified that the information provided for macro-prudential oversight purposes should follow common definitions and classification criteria. The EBA and ESRB should cooperate to define the scope of financial information necessary for the purposes of macro-prudential oversight. It will be important to ensure that the reporting formats and frequencies are adjusted according to the size of the institutions. In order to collect necessary information for the performance of macro-prudential oversight tasks with regard to the reporting requirements for large exposures, liquidity reporting and leverage ratio*[6]*, the ECB suggests introducing at least quarterly reporting and involving the ESRB in the development of the draft implementing technical standards. Lastly, in line with the principle of proportionality, the draft implementing technical standards could include specific requirements in terms of frequency of the reporting depending on the nature, scale and complexity of the activities of the institutions.*

5 COREP and FINREP templates, in force on the reporting date, as produced in the form of EBA guidelines published on EBA's website at www.eba.europa.eu or, as appropriate, in the form of draft technical standards developed by EBA and adopted by the Commission under Article 74(2) of Directive 2006/48/EC.

6 Articles 383, 403 and 417 of the proposed regulation.

Amendment 12 Article 130 of the proposed regulation	
‘Section 3 Recognition and mapping of credit risk assessment Sub-section 1 Recognition of ECAIs Article 130 ECAIs 1. An external credit assessment may be used to determine the risk weight of an exposure under this Chapter only if it has been issued by an eligible ECAI or has been endorsed by an eligible ECAI in accordance with Regulation (EC) No 1060/2009. 2. Eligible ECAIs are all credit rating agencies that have been registered or certified in accordance with Regulation (EC) No 1060/2009 and central banks issuing credit ratings which are exempt from Regulation (EC) No 1060/2009. 3. EBA shall publish a list of eligible ECAIs.’	‘Section 3 ~~Recognition~~ **Use of credit assessments** and mapping of credit risk assessment Sub-section 1 ~~Recognition of~~ ECAIs Article 130 **Use of credit assessments by** ECAIs 1. An external credit assessment may be used to determine the risk weight of an exposure under this Chapter only if it has been issued ~~by an eligible ECAI~~ or ~~has been~~ endorsed by an ~~eligible~~ ECAI in accordance with Regulation (EC) No 1060/2009. ~~2. Eligible ECAIs are all credit rating agencies that have been registered or certified in accordance with Regulation (EC) No 1060/2009 and central banks issuing credit ratings which are exempt from Regulation (EC) No 1060/2009.~~ ~~3.~~ EBA shall publish ~~a~~ **the** list of ~~eligible~~ ECAIs **in accordance with Article 2(4) and 18(3) of Regulation (EC) No 1060/2009 on its website.**’
<u>*Explanation*</u> *The proposed amendment aims to align the proposed regulation with the procedure currently in Regulation (EC) No 1060/2009 where ESMA and the Commission respectively determine the lists of credit rating agencies and central banks that are exempt from the application of Regulation (EC) No 1060/2009 (see also Amendments 5, 14 and 15).*	

Amendment 13 Articles 238(6) of the proposed regulation	
‘6. The competent authorities shall keep EBA informed about the specific cases, referred to	‘6. The competent authorities shall keep EBA informed about the specific cases, referred to

in paragraph 2, where the possible reduction in risk-weighted exposure amounts is not justified by a commensurate transfer of credit risk to third parties, and the use institutions make of paragraph 4. EBA shall monitor the range of practices in this area and shall, in accordance with Article 16 of Regulation (EU) No. 1093/2010, issue guidelines. '	in paragraph 2, where the possible reduction in risk-weighted exposure amounts is not justified by a commensurate transfer of credit risk to third parties, and the use institutions make of paragraph 4. EBA shall monitor the range of practices in this area and shall, **in the light of the observed best practices** in accordance with Article 15~~6~~ of Regulation (EU) No 1093/2010, ~~issue~~ **develop draft implementing technical** ~~guidelines~~ **standards.**'

Explanation

The ECB considers that, to ensure a level playing field in the area of securitisation and increase the transparency and clarity of the applicable rules, the EBA should develop draft implementing technical standards, rather than guidelines, with regard to the recognition of significant credit risk transfer, allowing a reduction in risk-weighed exposure amounts. Improving transparency and clarity of the rules in this area would contribute not only to ensuring a level playing field across borders and market participants, but also to setting the conditions for revitalising securitisation markets. A similar amendment is proposed for Article 239(6) of the proposed regulation.

Amendment 14

Article 262 of the proposed regulation

'Article 262 Recognition of ECAIs 1. Institutions may use ECAI credit assessments to determine the risk weight of a securitisation position only where the credit assessment has been issued by an ECAI or has been endorsed by an eligible ECAI in accordance with Regulation (EC) No 1060/2009. 2. Eligible ECAIs are all credit rating agencies that have been registered or certified in accordance with Regulation (EC) No 1060/2009 and central banks issuing credit ratings which are exempt from Regulation (EC) No 1060/2009.	'Article 262 ~~Recognition of~~ **Use of credit assessments by** ECAIs ~~1.~~ Institutions may use ~~ECAI~~ credit assessments to determine the risk weight of a securitisation position only where the credit assessment has been issued ~~by an ECAI~~ or ~~has been~~ endorsed by an ~~eligible~~ ECAI in accordance with Regulation (EC) No 1060/2009. ~~2. Eligible ECAIs are all credit rating agencies that have been registered or certified in accordance with Regulation (EC) No 1060/2009 and central banks issuing credit ratings which are exempt from Regulation (EC) No 1060/2009.~~

3. EBA shall publish a list of eligible ECAIs.’	~~3. EBA shall publish a list of eligible ECAIs.~~’
<u>*Explanation*</u> *See Amendments 5,12 and 15.*	
Amendment 15 Article 263 of the proposed regulation	
‘Article 263 Requirements to be met by the credit assessments of ECAIs For the purposes of calculating risk-weighted exposure amounts according to Section 3, institutions shall only use a credit assessment of an eligible ECAI if the following conditions are met: [...] (b) the credit assessments, procedures, methodologies assumptions and the key elements underpinning the assessments shall have been published by the ECAI. Also, loss and cashflow analysis as well as sensitivity of ratings to changes in the underlying ratings assumptions, including the performance of pool assets, shall be published by the ECAI. Information that is made available only to a limited number of entities shall not be considered to have been published. The credit assessments shall be included in the ECAI's transition matrix; [...].’	‘Article 263 Requirements to be met by the credit assessments of ECAIs For the purposes of calculating risk-weighted exposure amounts according to Section 3, institutions shall only use a credit assessment of an ~~eligible~~ ECAI if the following conditions are met: [...] (b) ~~the credit assessments, procedures, methodologies assumptions and the key elements underpinning the assessments shall have been published by the ECAI. Also l L~~loss and cashflow analysis as well as sensitivity of ratings to changes in the underlying ratings assumptions, including the performance of pool assets, shall be published by the ECAI, **as well as the credit assessments, procedures, methodologies, assumptions and the key elements underpinning the assessments in accordance with Regulation (EC) No 1060/2009.** Information that is made available only to a limited number of entities shall not be considered to have been published. The credit assessments shall be included in the ECAI's transition matrix; [...].’
<u>*Explanation*</u> *The amendments aim to clarify that the requirements in the proposed regulation are supplementary to*	

those already provided for in Regulation (EC) No 1060/2009.	
Amendment 16 Article 295(2)(b) of the proposed regulation	
‘(b) the competent authority of the CCP referred to in point (a) has published a document confirming that that CCP complies with all the recommendations for central counterparties published by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions;’	‘(b) the competent authorit~~y~~**ies for supervision and oversight** of the CCP referred to in point (a) ~~has~~ **have** published a document confirming that CCP complies with ~~all the recommendations~~ **applicable international standards** for ~~central counterparties~~ **CCPs** published by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions;’
<u>*Explanation*</u> *This article sets conditions under which the ‘competent authority’ confirms that the central counterparty (CCP) complies with all recommendations for CCPs published by the Committee on Payment and Settlement Systems and the International Organisation of Securities Commissions (CPSS-IOSCO). The ‘competent authority’ on its own may not adequately address the joint competencies of securities regulators and overseers. Therefore, reference should instead be made to ‘the competent authorities for supervision and oversight of the CCP’, in line with Opinion CON/2011/1*[7]*. This would be also in line with the draft CPSS-IOSCO principles for financial market infrastructures (FMIs) which provide that ‘the relevant authorities, consistent with their respective responsibilities for regulation, supervision, and oversight of an FMI, are expected to perform their own assessments of the FMI*[8]*. Furthermore, the reference to CPSS-IOSCO recommendations for CCPs may be obsolete soon, because the recommendations will be replaced by principles for FMIs. The use of a more general term would therefore be more appropriate to avoid misunderstandings and prepare for upcoming developments.*	
Amendment 17 Article 296(5)(b) of the proposed regulation	
‘(b) relevant laws, regulations, rules and	‘(b) relevant laws, regulations, rules and

7 ECB Opinion CON/2011/1 of 13 January 2011 on a proposal for a regulation of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (OJ C 57, 23.2.2011, p. 1).

8 See paragraph 1.27 of ‘Principles for Financial Market Infrastructures’, consultative report, March 2011, by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organisation of Securities Commissions, available on IOSCO’s website at www.iosco.org.

contractual arrangements applicable to or binding that institution or the CCP ensure that in the event of default or insolvency of the clearing member, the transfer of the institution's positions relating to those contracts and transactions and of the corresponding collateral to another clearing member within the relevant margin period of risk.'	contractual arrangements applicable to or binding that institution or the CCP ~~ensure~~ **facilitate** that in the event of default or insolvency of the clearing member, the transfer of the institution's positions relating to those contracts and transactions and of the corresponding collateral to another clearing member within the relevant margin period of risk.'

Explanation

The proposed regulation provides that the lower capital charges for direct participants would only be applied to client portfolios where they are both fully segregated from the portfolios of the client's clearing member and it is ensured that the positions could be 'ported' to another clearing member in the event of the default of the client's clearing member. In other circumstances, clients would face much higher capital charges associated with purely bilateral transactions. In practice, while the first condition is achievable (and will be encouraged by the proposed CPSS/IOSCO principle on segregation[9]), providing legal assurance of portability in all circumstances may prove difficult and perhaps impossible to achieve. However, CCPs often already seek to facilitate portability, which they will be required to do under the proposed CPSS/IOSCO principles. The ECB would therefore suggest replacing the term 'ensure' with 'facilitate,' which would provide a reduction in the capital requirement in the presence of measures taken by CCPs that support portability, but which do not actually 'ensure' it. In this context, it should be kept in mind that sound segregation of positions and collateral is already beneficial from a financial stability viewpoint as it protects the client against credit risk in relation to the default of its clearing member. Given the G20 commitment to extend central clearing to all standardised over-the-counter derivatives products[10], and that in practice many smaller participants will only have to access such clearing indirectly, this amendment would be beneficial for the effective implementation of the G20 commitment and for the promotion of financial stability.

Amendment 18

Article 299(7) of the proposed regulation

'7. EBA shall develop implementing technical standards to specify the following: (a) the frequency and dates of the	'7. EBA, **in close cooperation with the competent authorities for supervision and oversight of CCPs,** shall develop

9 See 'Principles for Financial Market Infrastructures', consultative report, March 2011, by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organisation of Securities Commissions.

10 See the commitments of G20 of September 2009 and June 2010.

calculations specified in paragraph 1; (b) the frequency, dates and uniform format of the notification specified in paragraph 4; (c) the situations in which the competent authority of an institution acting as a clearing member may require higher frequencies of calculation and reporting than the ones set out following points a and b. EBA shall submit those draft implementing technical standards to the Commission by 1 January 2014.'	implementing technical standards to specify the following: (a) the frequency and dates of the calculations specified in paragraph 1; (b) the frequency, dates and uniform format of the notification specified in paragraph 4; (c) the situations in which the competent authority of an institution acting as a clearing member may require higher frequencies of calculation and reporting than the ones set out following points a and b. EBA**, in close cooperation with the competent authorities for supervision and oversight of CCPs,** shall submit those draft implementing technical standards to the Commission by 1 January 2014.'

Explanation

An adequate level of capital requirements is essential for financial stability. Close coordination between securities regulators, banking supervisors and central banks as overseers is needed to avoid overlapping regulation or creating loopholes. Under the CPSS/IOSCO recommendations, regulators, supervisors and overseers are placed on an equal footing. Therefore, the development of any draft implementing technical standards and requirements for CCPs by a Union authority should be conducted in cooperation with ESCB members.

Amendment 19

Article 402 of the proposed regulation

'Article 402 Compliance with liquidity requirements Where a credit institution does not meet, or is expected not to meet the requirement set out in Article 401(1), it shall immediately notify the competent authorities and shall submit without undue delay to the competent authority a plan for the	'Article 402 Compliance with liquidity requirements Where a**n** ~~credit~~ institution does not meet, or is expected not to meet the requirement set out in Article 401(1), it shall immediately notify the competent authorities and shall submit without undue delay to the competent authority a plan for

timely restoration of compliance with Article 401. Until such compliance has been restored, the credit institution shall report the items daily by the end of each business day unless the competent authority authorises a lower frequency and a longer delay. Competent authorities shall only grant such authorisations based on the individual situation of a credit institution. They shall monitor the implementation of the restoration plan and shall require a more timely restoration if appropriate.'	the timely restoration of compliance with Article 401. Until such compliance has been restored, the credit institution shall report the items daily by the end of each business day unless the competent authority authorises a lower frequency and a longer delay. Competent authorities shall only grant such authorisations based on the individual situation of a credit institution. They shall monitor the implementation of the restoration plan and shall require a more timely restoration if appropriate. **EBA, in cooperation with the ESRB, shall issue guidance on compliance with liquidity requirements, including principles for the possible use of the stock of liquid assets in a stress scenario and how to address non-compliance.'**

Explanation

An adequate compliance framework for the liquidity coverage requirement should allow institutions to run down the stock of liquid assets in a stress scenario. Such a framework is not only very important for micro-prudential purposes but also from a broader market- and system-wide perspective. If the liquidity coverage requirement becomes a binding constraint at all times, the requirement may increase the pro-cyclical effect and worsen the impact of liquidity shocks, as credit institutions would be unable to use their liquid assets to respond to a shock. This could lead to 'fire sales', liquidity hoarding and the restriction of credit.

Article 402 of the proposed regulation introduces a basic framework for compliance with liquidity requirements, granting competent authorities discretion to ensure adequate use and restoration of the pool of liquid assets. In the ECB's view, the EBA, in cooperation with the ESRB, should be involved in the formulation of guidance on the possible release and build-up of the pool of liquid assets in times of stress.

In line with recitals 74 and 75 of the proposed regulation, the ECB understands that this provision should also apply to investment firms and would therefore recommend substituting the reference to 'credit institutions' by the notion of 'institutions' throughout the Article.

Amendment 20

Article 404(1) of the proposed regulation

‘1. Institutions shall report the following as liquid assets unless excluded by paragraph 2 and only if the liquid assets fulfil the conditions in paragraph 3: (a) cash and deposits held with central banks to the extent that these deposits can be withdrawn in times of stress; (b) transferable assets that are of extremely high liquidity and credit quality; (c) transferable assets representing claims on or guaranteed by the central government of a Member State or a third country if the institution incurs a liquidity risk in that Member State or third country that it covers by holding those liquid assets; (d) transferable assets that are of high liquidity and credit quality. […].’	‘1. Institutions shall report the following as liquid assets unless excluded by paragraph 2 and only if the liquid assets fulfil the conditions in paragraph 3: (a) cash**;** ~~and~~ **(b)** deposits held with central banks to the extent that these deposits can be withdrawn in times of stress; ~~(b)~~**(c)** transferable assets that are of extremely high liquidity and credit quality; ~~(c)~~**(d)** transferable assets representing claims on or guaranteed by the central government of a Member State or a third country if the institution incurs a liquidity risk in that Member State or third country that it covers by holding those liquid assets; ~~(d)~~**(e)** transferable assets that are of high liquidity and credit quality. **As regards deposits held with central banks as referred to in Article 404(1)(b), the competent authority and the central bank shall aim at reaching a common understanding regarding the extent to which these deposits can be withdrawn in times of stress.** […].’

<u>Explanation</u>

The proposed amendment is aimed at clarifying that central banks should be involved in determining the types of assets held with central banks that should be considered as liquid assets. This is in line with the Basel III agreement, which notes that competent supervisory authorities should discuss and agree with the relevant central bank the extent to which central bank reserves should count towards the stock of liquid

assets. In other words, they should determine the extent to which the central bank reserves can be drawn down in times of stress[11].

While Article 404 of the proposed regulation refers to 'deposits held with central banks to the extent that these deposits can be withdrawn in times of stress', Annex III of the proposed regulation refers to 'central bank reserves to the extent that these reserves can drawn down in times of stress'. Given that these are equivalent concepts, the terminology could be harmonised (see also Amendment 34).

With regard to deposits held with the Eurosystem, the ECB is of the view that overnight deposits, i.e. funds deposited at the deposit facility and the current account holdings of credit institutions minus the average reserve requirement over the 30-day period should count towards liquid assets.

Amendment 21

Article 404(5) of the proposed regulation

Text proposed by the Commission	Amendments proposed by the ECB
'5. Shares or units in CIUs may be treated as liquid assets up to an absolute amount of 250 million EUR provided that the requirements in Article 127 (3) are met and that the CIU, apart from derivatives to mitigate interest rate or credit risk, only invests in liquid assets.'	'5. Shares or units in CIUs may be treated as liquid assets up to an absolute amount of 250 million EUR provided that **their share in the total liquidity coverage requirement does not exceed the threshold determined in accordance with paragraph 5a, that** the requirements in Article 127(3) are met and that the CIU, apart from derivatives to mitigate interest rate or credit risk, only invests in liquid assets.'

Explanation

As regards the treatment of shares or units in CIUs as liquid assets, the ECB is concerned about the appropriateness of setting only an absolute limit of EUR 250 million, as this could allow smaller institutions to fulfil the liquidity coverage requirement with only these instruments. Instead, in order to limit concentration risk, a limit of, e.g. 10% of the total liquidity coverage requirement could be introduced. The ECB is of the view that the EBA should further assess and adequately calibrate this limit as part of its overall analysis on the definition of liquid assets.

In addition, the treatment of shares or units in CIUs as liquid assets in the proposed regulation is inconsistent, at least for the Eurosystem with the requirement in Article 404(3)(b) of the proposed regulation that liquid assets must be eligible collateral in normal times for intraday liquidity needs and overnight liquidity facilities of a central bank in a Member State. In fact, shares or units in CIUs are not eligible collateral for Eurosystem monetary policy operations, regardless of the type of underlying assets

11 Paragraph 40, footnote 9 of the Basel III agreement.

in which the CIUs invest. In addition, shares or units in CIUs are not included on the detailed list of liquid assets in the Basel III agreement.	
Amendment 22 Article 404(5a) of the proposed regulation (new)	
No text.	**'5a. EBA shall develop draft implementing technical standards specifying the threshold referred to in paragraph 5.** **EBA shall submit those draft implementing technical standards to the Commission by 1 January 2014.** **Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1093/2010.'**
<u>*Explanation*</u> *The ECB suggests that EBA establish, by way of draft implementing technical standards, the threshold referred to in Article 404(5) of the proposed regulation to determine the maximum share of shares/units of CIUs in the total LCR.*	

Amendment 23 Article 443 of the proposed regulation	
'Article 443 Prudential requirements The Commission shall be empowered to adopt delegated acts in accordance with Article 445, to impose stricter prudential requirements, for a limited period of time, for all exposures or for exposures to one or more sectors, regions or Member States, where this is necessary to address changes in the intensity of micro-prudential and macro-prudential risks which arise from market	'Article 443 Prudential requirements **1.** The Commission shall be empowered to adopt delegated acts in accordance with Article 445, to impose stricter prudential requirements, for a limited period of time, for all exposures or for exposures to one or more sectors, regions or Member States, where this is necessary to address changes in the intensity of micro-prudential and macro-prudential risks which

developments emerging after the entry into force of this Regulation, in particular upon the recommendation or opinion of the ESRB, concerning […]’.	arise from market developments emerging after the entry into force of this Regulation, in particular upon the recommendation or opinion of the ESRB concerning […] **(l) the requirements for large exposures, laid down in Article 381 and Articles 384 to 392;** **(m) the disclosure requirements, laid down in Articles 419 to 420 and Articles 422 to 436;** **(n) the liquidity requirements and the leverage ratio [once introduced into the Union regulatory framework].** This delegation of power shall be subject to the procedure referred to in Article 446. **2. The ESRB may recommend an extension of the list of prudential requirements set out in paragraph 1.**’

<u>Explanation</u>

The scope of the delegated acts which the Commission may adopt should be extended to cover prudential requirements on large exposures and disclosure requirements as well as, once they become part of the applicable Union regulatory framework, leverage and liquidity requirements.

The ECB also suggests that the ESRB could issue recommendations to the Commission regarding the extension of the list of prudential requirements.

Amendment 24

Part Nine a of the proposed regulation (new)

No text.	**‘PART NINEa** **APPLICATION OF STRICTER PRUDENTIAL REQUIREMENTS BY NATIONAL AUTHORITIES** **Article 443a** **Application of stricter prudential requirements by**

	national authorities **1. National authorities, either on their own initiative or based on an ESRB recommendation pursuant to Regulation (EU) No 1092/2010, may impose stricter prudential requirements on institutions where macro-prudential risks are identified as posing a threat to financial stability at national level in the following areas:** **(a) the level of own funds laid, down in Article 87(1);** **(b) the requirements for large exposures, laid down in Article 381 and Articles 384 to 392;** **(c) the liquidity requirements and the leverage ratio [once introduced into the Union regulatory framework].** **2. National authorities shall notify the ESRB of their proposal to impose stricter prudential requirements in accordance with paragraph 1(a) to (c) no later than two working days from the date of their proposal in view of the identified macro-prudential risks to financial stability. In accordance with Regulation (EU) No 1092/2010 and taking into account confidentiality requirements, the ESRB shall play a coordination role by assessing, upon request of the Commission or of at least three Member States, the financial stability concerns and possible unintended consequences and spillover effects on other Member States that could result from the imposition of the stricter requirements.** **3. The stricter prudential requirements referred to in paragraph 1 shall be applied only by tightening the quantitative ratios and limits for points (a), (b) and (c) of paragraph 1, and in full compliance with all other aspects of the provisions of this Regulation.** **4. The ESRB and the EBA shall publish the stricter prudential requirements adopted by national**

	authorities on their respective websites. 5. **Where the ESRB determines that the identified macro-prudential risks to financial stability, as assessed in accordance with paragraph 2, that led to stricter prudential requirements cease to exist, the national authorities shall repeal the stricter requirements and the original provisions of this Regulation shall apply. If this does not occur, the ESRB shall issue a recommendation to the Commission to take action against a Member State where the Member State concerned does not act appropriately from a systemic risk perspective.** 6. **The ESRB may, in accordance with Regulation (EU) No 1092/2010, recommend the extension of the list of prudential requirements specified in paragraph 1.**'

Explanation

This amendment is aimed at defining the procedures and the conditions under which national authorities may apply more stringent prudential requirements where systemic risks to financial stability arise in the Member States and at specifying the role of the ESRB in this context (for more details regarding the rationale for this provision, see paragraphs 5.4 to 5.6 of the Opinion).

The ECB also suggests that the ESRB could issue recommendations to the Commission regarding the extension of the list of prudential requirements.

Amendment 25

Article 444(3) of the proposed regulation

'3. The Commission shall adopt the first delegated act referred to in paragraph 1 at the latest by 31 December 2015. A delegated act adopted in accordance with this Article shall, however, not apply before 1 January 2015.'	'3. The Commission shall adopt the first delegated act referred to in paragraph 1 at the latest by 31 December **2014**~~5~~. A delegated act adopted in accordance with this Article shall, however, not apply before 1 January 2015.'

Explanation

In order to be consistent with the Commission's commitment to implement the liquidity coverage requirement by 1 January 2015, the delegated act specifying the requirement in detail should be adopted, at the latest, by 31 December 2014.

Amendment 26 Article 473(1)(c) of the proposed regulation (new)	
No text.	**'(c) those senior units qualify for credit quality step 1.'**
<u>Explanation</u> *Article 124 of the proposed regulation provides that certain categories of covered bonds are eligible for preferential treatment where they meet certain requirements. One of these categories is covered bonds secured by senior units issued by French Fonds Communs de Créances (FCCs) or by equivalent securitisation entities governed by the laws of a Member State securitising residential property exposures. One of the requirements provided by Article 124 to this category of covered bonds is that the senior units issued by FCCs or by equivalent securitisation entities do not exceed 10% of the nominal amount of the outstanding issue.* *Article 473(1) of the proposed regulation provides that, until 31 December 2014, the 10% limit for senior units issued by FCCs or by equivalent securitisation entities laid down in Article 124(1)(d) and (e) do not apply under certain conditions. Thus, until 31 December 2014, no limit is imposed regarding the percentage of senior units issued by FCCs or by equivalent securitisation entities laid down in Article 124(1)(d) and (e) of the proposed regulation.* *As expressed in Opinion CON/2010/65*[12]*, the ECB is of the view that the aim for the regulators in the near future should be to remove the 10 % waiver limit for FCCs or equivalent securitisation entities laid down in Article 124(1) (d) and (e) and to develop a rigorous set of criteria for assets to be included in the cover pool of covered bonds which: (a) do not rely on external ratings; (b) are strong enough to secure market confidence in covered bonds, while allowing financial institutions sufficient time to adjust their respective business model; (c) allow only securitisation within a group; (d) require from the supervisory authorities a 'look-through' approach for the assets underlying the securitisation. The ECB welcomes regulatory steps which mitigate the reliance of legislation on external ratings. Nonetheless, the ECB proposes to maintain a reference to the most favourable credit quality required for these units as long as the derogation provided for in Article 473(1) applies in order to provide credibility and transparency regarding the covered bonds market.*	

12 ECB Opinion CON/2010/65 of 6 August 2010 on a proposal for a Directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for resecuritisations, and the supervisory review of remuneration policies (OJ C 223, 18.8.2010, p. 1).

Amendment 27 Article 473(2) of the proposed regulation	
‘2. By 1 January 2013, the Commission shall review the appropriateness of the derogation set out in paragraph 1 and, if relevant, the appropriateness of extending similar treatment to any other form of covered bond. In the light of that review, the Commission may, if appropriate, adopt delegated acts in accordance with Article 445 to make that derogation permanent or make legislative proposals to extend it to other forms of covered bonds.’	‘2. By 1 January 2013, the Commission shall review the appropriateness of the derogation set out in paragraph 1~~ and, if relevant, the appropriateness of extending similar treatment to any other form of covered bond~~. In the light of that review, the Commission may, if appropriate, adopt delegated acts in accordance with Article 445 to make that derogation permanent or **to abrogate it**. ~~make legislative proposals to extend it to other forms of covered bonds~~.’
Explanation *See the explanation to Amendment 26.*	

Amendment 28 Article 481 of the proposed regulation	
‘Article 481 Liquidity requirements 1. […] EBA shall in its report review in particular the appropriateness of the calibration of the following: […] 2. EBA shall, by 31 December 2013, report to the Commission on appropriate uniform definitions of high and of extremely high liquidity and credit quality of transferable assets for purposes of Article 404. […] 3. By 31 December 2015, EBA shall report to the Commission on whether and how it would be appropriate to ensure that institutions use stable sources of funding […] By 31 December 2016, the Commission shall,	‘Article 481 Liquidity requirements 1. […] EBA shall**, after consulting the ECB,** in its report review in particular the appropriateness of the calibration of the following: […] **(d) the appropriate limit as percentage of the total of the liquidity coverage requirement for shares or units in CIUs for the purposes of Article 404(5).** 2. EBA shall, by 31 December 2013, report, **after consulting the ECB,** to the Commission on appropriate uniform definitions of high and of extremely high liquidity and credit quality of transferable assets for purposes of Article 404 […]

<table>
<tr><td>on the basis of these reports, submit a report, and if appropriate a legislative proposal to the European Parliament and Council.’</td><td>3. By 31 December 2015, EBA shall, after consulting the ECB, report to the Commission on <s>whether and</s> how it would be appropriate to ensure that institutions use stable sources of funding […]

By 31 December 2016, the Commission shall, on the basis of these reports, submit a report<s>,</s> and <s>if appropriate</s> a legislative proposal to the European Parliament and Council.’</td></tr>
<tr><td colspan="2"><u>Explanation</u>

The proposed amendment relating to the consultation of the ECB aims to clarify that the ECB should contribute to the development of the reports owing to its competence and expertise in the area. The interaction between liquidity regulation and monetary policy operations is expected to be significant and complex and it is therefore important to ensure that regulation does not lead to unintended consequences with regard to recourse to central bank funding and related financial markets. As noted in Amendment 24, the EBA could prepare draft implementing technical standards on calibration of the limit for investments in shares or units in CIUs as a percentage of the total liquidity coverage requirement.

The proposed amendments relating to the implementation of the NSFR are aimed at avoiding any possible ambiguity, even if the exact content of the NSFR is not yet determined, with respect to the implementation of this requirement. The Basel III agreement provides that the NSFR will move to a minimum standard by 1 January 2018, after an observation period that includes a review clause to address any unintended consequences.</td></tr>
<tr><td colspan="2">Amendment 29

Article 482(1) of the proposed regulation</td></tr>
<tr><td>‘1. The Commission shall submit by 31 December 2016 a report on the impact and effectiveness of the leverage ratio to the European Parliament and the Council. Where appropriate, the report shall be accompanied by a legislative proposal on the introduction of one ore more levels for the leverage ratio that institutions would be required to meet, suggesting and adequate calibration for those levels and any appropriate adjustments to the capital measure and the total exposure</td><td>‘1. The Commission shall submit by 31 December 2016 a report on the impact and effectiveness of the leverage ratio to the European Parliament and the Council. <s>Where appropriate,</s> The report shall be accompanied by a legislative proposal on the introduction of one or<s>e</s> more levels for the leverage ratio that institutions <s>would</s> shall be required to meet, suggesting an<s>d</s> adequate calibration for those levels and any appropriate adjustments to the capital measure and the total exposure measure as defined in Article 416.’</td></tr>
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<tr><td>measure as defined in Article 416.’</td><td></td></tr>
<tr><td colspan="2"><u>Explanation</u>
The proposed amendment aims to dispel any concerns with regard to the commitment to introduce a leverage ratio, subject to appropriate calibration, following the observation period.</td></tr>
<tr><td colspan="2">Amendment 30
Annex III of the proposed regulation</td></tr>
<tr><td>‘Annex III
Items subject to supplementary reporting of liquid assets […].’</td><td>‘~~Annex III~~
~~Items subject to supplementary reporting of liquid assets […].~~’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
To avoid ambiguities and to simplify the reporting of liquid assets by institutions, the ECB recommends deleting Annex III and merging its content, with appropriate adjustments and amendments, with the list of liquid assets put forward in Article 404(1) of the proposed regulation. The references to Annex III in other provisions of the proposed regulation should be deleted accordingly. In the case of Annex III remaining as part of the proposed regulation, the meaning of items subject to ‘supplementary’ reporting in the heading should be clarified in order to avoid issues of interpretation .</td></tr>
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