<u>Specific comments on CRD Review Proposals</u>

<u>General Scope of the CRD:</u>

With regards to the general scope of the CRD, article 2 (5a) lays down objective criteria according to which the Commission may establish an exemption from the scope of the CRR/CRD for 'public development-type' institutions. EAPB welcomes this proposal but would want to emphasize that it has to be without prejudice to already existing exemptions in CRD article 2 (5) or differentiated treatment of promotional banks in some of the provisions of the CRR and without prejudice to the powers of the co-legislators to add institutions to the list in article 2 (5) under the ordinary legislative procedure.

EAPB believes that for already exempted entities, the review clause in CRD article 2 (7) should not be based on the prevalence of the criteria laid down in article 2 (5a) and therefore be entirely removed. For example, the SSM criteria were not part of the rationale which allowed excluding the already exempted entities in the first place and should hence not be used to reconsider their status. Any changes to this status could jeopardise the well-established and economically stabilising role of the 'public development-type' entities already exempted from the CRD and would set the wrong signals to shareholders and market participants.

EAPB also observes that the conditions laid down for the purpose of the proposed CRD article 2 (5a) deviate from the definition of 'public development credit institutions' as laid down in the CRR review proposals in article 429a (2). In order to enhance clarity and legal certainty, EAPB would welcome if the criteria in CRD article 2 (5a) would be aligned with the wording in CRR article 429a (2) following EAPB's proposed amendments including a further clarification referring to entities of credit institutions. Furthermore, provisions in other legislative acts make specific reference to entities referred to in CRD IV article 2 (5). A new basis for exemptions should allow the exempted institutions to be covered by all exemptions that are offered to named institutions under article 2 (5) in order to ensure a level playing field. Against this background, existing references in other pieces of banking regulation, in particular BRRD article 2 (1) No. 2, need to be adjusted by including a reference to CRD article 2 (5a).

For the provision to allow sufficient scope for present and future public policy requirements, the Member States' public authorities should continue being able to choose how to organise their public institutions. Therefore, article 2 (5a) a) should refrain from "under public law" since not all promotional banks operate under public law. In the same vein, further clarification is required for article 2 (5a) a) which needs to be supplemented by 'or equivalent provisions' for promotional banks operating under dedicated legal frameworks but not under public law (e.g. articles of association). Promotional banks in Europe are established by a Member State's central or regional government or local authorities or a public sector entity within the respective government. However, the government has leeway on whether or whether not to set up its promotional bank under public law. The diversity of legal frameworks across Europe, and subsequently the diversity of formal ways to assign a public mandate to a promotional bank should continue to be at the discretion of the Member States and their central or regional governments or local authorities and EAPB would assume that it was not the intention of the proposals to restrict these frameworks. Even if not all promotional banks are established 'under public law' their operations and mandates are linked to equivalent national legislation.

It is also crucial to make further adjustments in article 2 (5a) (d) as to better align existing definitions in various EU legislation (corresponding to regulation (EU) 2015/1017 and to delegated acts (EU) 2015/63 and (EU) 2015/61 respectively) and in order to capture the variety of promotional banks in Europe (highlighted in the communication on national promotional banks issued by the European Commission on 22 July 2015). In particular, article 2 (5a) d) would need to reflect that 90 % of a promotional bank's original capital, funding or loans – rather than 90 % of its own funds requirements or exposures – are directly or indirectly guaranteed by a central or regional government or a local authority. Such an

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adjustment would not only be in line with the provisions in the aforementioned delegated acts, but depict the reality of promotional banks in a more precise manner since promotional banks also perform auxiliary activities (e.g. managing liquidity portfolios to limit liquidity or interest rate risks) which are important for them to be able to fulfil their public policy mandate.

Moreover, it would also be important to remove article 2 (5a) e) since promotional banks – just like any other CRR credit institution – are not precluded from taking covered deposits. While it is true that promotional banks de facto do not accept deposits from natural persons, de jure their bank licence does not preclude them from doing so. If the co-legislators would insist to have a reference to deposits in this context though, it would be highly desirable to emphasise that 'public development credit institutions' may only accept certain types of deposits in connection with their promotional activities or the public mandate granted to them. In this context, EAPB also wants to highlight that Article 9 (2) would need to be amended in case article 2 (5a) e) were deleted. Specifically, the list of entities in article 9 (2) would have to include entities exempted via article 2 (5a), as well. Otherwise exempted entities would be precluded from taking deposits or other repayable funds according to article 9 (1) CRD.

In the same vein, EAPB would suggest removing the size criteria in CRD article 2 (5a) g), h) and i). EAPB takes note of the Commission's intention to prevent financial instability and to protect depositors when exempting entities from the scope of the CRD. However, as far as promotional banks are concerned, criteria such as the requirement that an entity is subject to adequate and effective prudential supervision are more suitable to achieve the aforementioned aims, the size criteria in article 2 (5a) g), h) and i) do not seem appropriate in this context. For the general scope of the CRD, a more risk-sensitive approach should be applicable though. Promotional banks display of an exceptionally low risk profile and lean business models which should be the driving aspect when considering an exemption from CRD instead of absolute size only criteria. The size of a specific promotional bank depends solely on the respective public owner. It would be counterintuitive to automatically disqualify promotional institutions that are of a certain size or a significant domestic relevance from an exemption. The rationale for a Member State to establish an institution with a special public policy mandate will generally be to support the domestic economy making these institutions per definition significant. This rationale should not be overwritten with considerations as laid down in articles 2 (5a) g), h) and i) as these articles would automatically preclude possible exemptions which was originally provided exactly for such institutions. Thus, any CRD provision should not go beyond ensuring that a Member State has the financial resources to solve / contain hypothetical problems in a promotional bank under its responsibility, and should not add extra restrictions if a promotional bank in one country does not in any way impact or create risk to other Member States.

Therefore, EAPB would like to propose the following amendments:

CRD article	Proposed amendment 1
Recital 17	(17) Public development banks and credit unions in certain Member States have been historically exempted from Union legislation on credit institutions. **Public development banks are referred to in several different contexts of this Directive, the CRR as well as other parts of banking regulation. Even though the prudential terminology varies (e.g. 'promotional bank' or 'promotional lender') the notion of these terms is essentially the same. Accordingly, public development banks are undertakings or entities set up by a Member State's central or regional government or local authority, which carry out financial activities on a professional basis, whose primary goal is not to maximise profit or market share but to promote that government's public policy objectives. Further, they have direct or indirect, explicit or implicit guarantees from their public owners to accomplish these goals, which makes them fundamentally different from commercial banks. Therefore, a tailor-made and differentiated prudential treatment in accordance with the**

	proportionality and subsidiarity principle for this type of banks is warranted. In order to ensure a level playing field, it should be possible to allow also other public development banks and credit unions to be exempted from Union legislation on credit institutions and to operate only under national regulatory safeguards commensurate with the risks that they incur. To provide for legal certainty it is necessary to set out clear criteria for such additional exemptions and to delegate to the Commission the power to adopt acts in accordance with Article 290 TFEU in respect of identifying whether specific institutions or categories of institutions fulfil those defined criteria.
2 (5a)	This Directive shall not apply to an institution **or an entity of a credit institution** where the Commission establishes in a delegated act adopted pursuant to Article 148, on the basis of information available to it that the institution **or entity of a credit institution** fulfils all of the following conditions~~, without prejudice to the application of state aid rules~~: (a) it has been established ~~under public law~~ by a Member State's central government, regional government or local authority; (b) laws ~~and~~ **or equivalent** provisions **such as the articles of association** governing the institution confirm that its activity is limited to advancing specified objectives of financial, social or economic public policy in accordance with the laws and provisions governing that institution, on a non-competitive basis **and that its goal is not to maximise profit or market share**. For these purposes, public policy objectives may include the provision of financing for promotional or development purposes to specific economic activities, or geographical areas of the relevant Member State; (c) it is subject to adequate and effective prudential requirements, including minimum own funds requirements, and to an adequate supervisory framework which has similar effect as the framework established under Union law; (d) the central government, regional government or local authority, as applicable, has an obligation to protect the institution's viability or directly or indirectly guarantees at least 90% of the institution's ~~own funds requirements, funding requirements or exposures~~ **original capital or funding or the loans it grants;** ~~(e) it is precluded from accepting covered deposits as defined in point (5) of Article 2(1) of Directive 2014/49/EU of the European Parliament and of the Council;~~ ~~(f)~~ **(e)** its activities are confined to the Member State where its head office is situated; ~~(g) the total value of the institution's assets is below EUR 30 billion;~~ ~~(h) the ratio of the institution's total assets over the GDP of the Member State concerned is less than 20%;~~ ~~(i) the institution is not of significant relevance with regard to the domestic economy of the Member State concerned.~~ The Commission shall regularly review whether an institution subject to a delegated act adopted pursuant to Article 148 continues to fulfil the conditions set out in the first subparagraph.
2 (7)	~~By [5 years after entry into force], the Commission shall review the list set out in~~

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	~~Article 2(5) by considering whether the reasons that led to the inclusion of entities in the list are still valid, the national legal framework and supervision applicable to the entities in the list, the type and quality of deposit coverage of the entities in the list and, for entities of the type specified in paragraphs 2(5a) and 2(5b) taking into account also the criteria described therein.~~
9 (2)	2. Paragraph 1 shall not apply to the taking of deposits or other repayable funds by any of the following: (a) a Member State; (b) a Member State's regional or local authority; (c) public international bodies of which one or more Member States are members; (d) persons or undertakings the taking up and pursuit of the business of which is explicitly covered by Union law, other than this Directive and Regulation (EU) No 575/2013; (e) entities referred to in Article 2(5), the activity of which is governed by national law; **(f) entities exempted via delegated act based on Article 2(5a).**

Board Committees:

EAPB suggests introducing absolute thresholds in those articles of the CRD IV which require significant institutions to establish different board committees (e.g. a nomination committee, a risk committee, or a remuneration committee) as this would ensure a uniform application of the principle of proportionality.

CRD article	Proposed amendment 2
76 (3)	3. Member States shall ensure that institutions that are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities establish a risk committee composed of members of the management body who do not perform any executive function in the institution concerned. Members of the risk committee shall have appropriate knowledge, skills and expertise to fully understand and monitor the risk strategy and the risk appetite of the institution. **An institution the value of the assets of which is on average equal to or less than EUR 25 billion or the number of staff members of which is equal to or less than 1.000 over the four-year period immediately preceding the current financial year shall be regarded as not significant for the purpose of this Article.** (…)
88 (2)	2. Member States shall ensure that institutions which are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities establish a nomination committee composed of members of the management body who do not perform any executive function in the institution concerned. **An institution the value of the assets of which is on average equal to or less than EUR 25 billion or the number of staff members of which is equal to or less than 1.000 over the four-year period immediately preceding the current financial year shall be regarded as not significant for the purpose of this Article.**

	(…)
95 (1)	1. Competent authorities shall ensure that institutions that are significant in terms of their size, internal organisation and the nature, the scope and the complexity of their activities establish a remuneration committee. The remuneration committee shall be constituted in such a way as to enable it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity. **An institution the value of the assets of which is on average equal to or less than EUR 25 billion or the number of staff members of which is equal to or less than 1.000 over the four-year period immediately preceding the current financial year shall be regarded as not significant for the purpose of this Article.**

Remuneration:

EAPB welcomes that CRD article 94 (3) a) and (3) b) introduce a more proportionate approach to remuneration policy by allowing derogations for certain institutions and staff members. Nevertheless, the wording in article 94 (3) a) only reflects a size criterion but does not capture risk profiles, balance sheet structures and lean business models which should also be taken into account for proportionality considerations. The rationale should be that the measures are proportionate to the size of the payment and size of the organisation. In this context, the balance sheet size is not an appropriate indicator for the size of the organisation. If needed to be included, one would rather use the number of employees as an indicator. Another important aspect is that public banks in general, on the contrary to small banks which are usually part of either a banking group or an institutional protection scheme, don't have the advantage of being supported by a parent or central institution with regard to the compliance with regulatory requirements. Therefore, EAPB would welcome a reconsideration of the thresholds and a more risk-based approach to proportionality also taking into account the exposure to risks and complexity of business models instead of a size criterion only. With regard to article 94 (3) b), EAPB believes that the threshold should be adjusted to Member States in which the absolute value of the variable remuneration is much lower than the EU average as it stems from EBA's Review of the Application of the Principle of Proportionality to the Remuneration Provisions in Directive 2013/36/EU from 21 November 2016 (EBA-Op-2016-20). The value of such remuneration may still be relatively insignificant even when constituting a higher proportion of the fixed remuneration than one fourth, but still remaining significantly below the maximum threshold which is set at the level of 100 % (or 200 % in justified cases). Thus, we propose to introduce an alternative wording which allows for a derogation for staff members whose annual variable remuneration does not exceed EUR 50.000 and does not represent more than 40 % of the staff member's annual total remuneration.

CRD article	Proposed amendment 3
94 (3)	By way of derogation from paragraph 1, the principles set out in points (l), (m) and in the second subparagraph of point (o) shall not apply to: (a) an institution the value of the assets of which is on average equal to or less than EUR **2**5 billion **or the number of staff members of which is equal to or less than 1.000** over the four-year period immediately preceding the current financial year **or** (b) a staff member whose annual variable remuneration does not exceed EUR 50.000 and does not represent more than **40 %** ~~one fourth~~ of the staff member's annual total remuneration.

Interest Rate Risk in the Banking Book (IRRBB):

The IRRBB framework was reviewed by the BCBS and finalised in April 2016. It prescribes more restrictive calculation methods and stress scenarios for the interest rate shock as compared to the previous standard. The new BCBS IRRBB standard lays down that if a prescribed interest rate shock scenario reveals a potential depletion of 15 % of Tier 1 capital, further supervisory action will be needed. Under the old standard however, this threshold was set at 20 %. Moreover, while public and promotional banks usually have a high level of Tier 1 capital, they might still be disproportionally affected by the new IRRBB standard due to the present-value calculation approach in the IRRBB which does not properly reflect the high level of capital used for funding of long term promotional loans (e.g. social housing loans). EAPB is also concerned that many of the important features of the IRRBB framework are mandated to the European Banking Authority (EBA) and thus delegated and downgraded to level 2 measures. This may open the scope for an overly standardised framework which does not take into account the specificities of certain bank business models. Therefore, further adjustments should be made for a more proportional implementation of the new BCBS IRRBB framework.

With regards to CRD article 84, it should be recalled that the BCBS IRRBB consultation revealed that a standardised methodology for ‘net interest income’ calculations for interest rate risk modelling cannot occur without prejudice to specialised bank business models such as promotional banks. For this reason, the BCBS refrained from using standardised ‘net interest income’ methods in the Basel IRRBB framework. Therefore, EAPB would prefer an analogy to the BCBS provision. CRD provisions should only prescribe ‘economic value of equity’ for IRRBB modelling purpose but offer more leeway to ‘net interest income’ approaches and avoid unnecessary and potentially distorting standardisation. This should also be reflected accordingly in article 84 (1). In the same vein, CRD article 84 (2) prescribes institutions to implement systems to assess and monitor risks from changes in credit spreads which however is not prescribed in the BCBS IRRBB framework. As a matter of fact, there is no technical consensus on whether and how to treat credit spread risks in the banking book and the CRD proposals should therefore not deviate from what was agreed in an international forum on BCBS level.

With regards to CRD article 84 (3) and 84 (5), it does not seem feasible to set up neutral criteria to assess the suitability of an IRRBB risk model. Therefore, EBA should not be given a mandate to develop guidelines with such criteria. Instead, competent authorities should rather refer to SREP outcomes which also include assessments of a bank’s IRRBB management.

CRD article 98 (5) requires supervisory measures for institutions whose economic value of equity referred to in CRD article 84 (1) declines by more than 15 %. Imposing supervisory measures only based on economic value of equity outcomes ignores a bank’s actual equity endowment, which is often very high for the case of promotional banks. Further to that, lowering the threshold for supervisory measures from 20 % in CRD IV to now 15 % implies an additional constraint. EAPB would want to avoid that one-sided and overly restrictive risk modelling aspects unduly burden public and promotional banks and would thus propose to amend article 98 (5) allowing also an inclusion of equity in the calculation of the economic value of equity by treating it as having the same interest rate/term characteristics as the portfolio of assets which hedges earnings on it (‘earnings-adjusted economic value’).

CRD article	Proposed amendment 4
84	1. Competent authorities shall ensure that institutions implement internal systems ~~or use the standardised methodology~~ to identify, evaluate, manage and mitigate the risks arising from potential changes in interest rates that affect both the economic value of equity and the net interest income of an institution's non-trading book activities **or use at least the standardised methodology for economic value of equity.** 2. Competent authorities shall ensure that institutions implement systems to assess ~~and~~

	~~monitor~~ the risks arising from potential changes in credit spreads ~~that affect both the economic value of equity and the net interest income of an institution's non-trading book activities.~~ 3. **As a result of the SREP, c**ompetent authorities may require institutions to use the standardised methodology referred to in paragraph 1 where the internal systems implemented by the institutions for the purposes of evaluating the risks referred to in paragraph 1 are not satisfactory. (…) ~~5. EBA shall issue guidelines to specify:~~ ~~(a) the criteria for the evaluation by an institution's internal system of the risks referred to in paragraph 1;~~ ~~(b) the criteria for the identification, management and mitigation by institutions of the risks referred to in paragraph 1;~~ ~~(c) the criteria for the assessment and monitoring by institutions of the risks referred to in paragraph 2;~~ ~~(d) the criteria for determining which the internal systems implemented by the institutions for the purposes of paragraph 1 are not satisfactory as referred to in paragraph 3;~~ ~~EBA shall issue those guidelines by [one year after entry into force].~~
98 (5)	The review and evaluation performed by competent authorities shall include the exposure of institutions to the interest rate risk arising from non-trading book activities **from a balanced net interest income and economic value of equity perspective.** Supervisory measures shall be **considered** ~~required~~ at least in the case of institutions whose economic value of equity referred to in Article 84(1) declines by more than ~~15~~ **20** % of their Tier 1 capital as a result of a sudden and unexpected change in interest rates as set out in any of six supervisory shock scenarios applied to interest rates. **Upon request, competent authorities may approve the inclusion of equity in the economic value of equity referred to in Article 84(1) on a conservative basis.**

Supervisory powers and additional reporting and own funds requirements:

EAPB welcomes the specification in article 104 (2) which clarifies that competent authorities should not demand information to be duplicated and reported several times. However, the conditions imposed by 104 (1), i.e. the circumstances that have to be met for the request of duplicative information not to be appropriate, are too restrictive. There are multiple instances when competent authorities (including resolution authorities, which according to article 4 (2) (iv) of the EBA regulation are also considered competent authorities) demand duplicative information of institutions and this is not related to either the circumstances of CRD article 102 or an ongoing supervisory examination programme. Requesting duplicative information from institutions should not be allowed when the definition of what constitutes duplicative as per this article is met. Therefore, EAPB would request to ensure that all instances where duplicative information is requested by competent authorities are covered.

CRD article 104a (1) a) allows requiring additional capital for risks or elements of risks that are explicitly excluded from own funds requirements set out in CRR Parts Three, Four, Five and Seven. EAPB believes that the proposal on this article is reaching too far. It would imply that the relevant authority could overwrite level I text by including risks explicitly excluded under Pillar I; e.g. counterparties excluded for CVA risk or exposures excluded for the leverage ratio. Public authorities which own a credit institution for public policy reasons should be given a certain level of flexibility to not have to immediately charge additional own funds requirements to public budgets.

With regard to CRD article 104a (1) e) EAPB believes that it should be clarified that not every repeated failure to meet the guidance on additional own funds should lead to the imposition of an additional own funds requirement. On the one hand, this seems appropriate since it lies within the nature of the Pillar II Guidance that it is not mandatory and thus, should not automatically lead to supervisory measures. On the other hand, EAPB supports the view that a failure to meet the Pillar II Guidance should be without any consequences especially in times of economic stress or downturn. Otherwise, supervisory measures could have unintended pro-cyclical effects. Consequently, competent authorities should always first take into account the economic situation and engage a dialogue with the respective credit institution before imposing any additional own funds requirements.

According to CRD article 104a (6), the EBA shall develop draft regulatory technical standards (RTS) specifying how the risks and elements of risks in 104a (1) a) shall be measured. That could lead to a standardisation of the internal capital adequacy assessment process (ICAAP) which doesn't appear to be the Commission's intention in this context. As a consequence, the individual methods of the institutions would be significantly restricted or completely cancelled. This would contradict the notion of the ICAAP which is designed as a purely internal and institution specific procedure. Therefore, EAPB proposes not mandating EBA with a technical standard in this regard but instead giving institutions the necessary flexibility and avoiding strong constraints regarding existing internal procedures.

With regards to article 104b, careful considerations should be given to the design of the supervisory stress test. Using the supervisory stress test as a benchmark for the determination of guidance on additional own funds does not seem agreeable as it could create the risk of an unlevel playing field. This is due to several facts. Firstly, supervisory scenarios are standardised across the EU and may not adequately consider the risks faced by individual institutions in specific jurisdictions or with specific business models. In addition, the results may unduly penalise some institutions, e.g. when the scenario used assumes downturns in specific regions of the EU which then disproportionately affect institutions active in these regions while leaving others unaffected. And secondly, methodologies used for the supervisory stress test can contain somewhat arbitrary assumptions which do not reflect economic realities. Thus, factors included in the stress test should cover the risks of all relevant asset classes and jurisdictions and the methodology (i.e. the translation of a certain stressed factor to funding rates, balance sheet growth, etc.) should take into account business model specificities.

Therefore, EAPB would also ask to take into consideration that Pillar II Guidance should be set on the basis of bank-specific rather than uniform supervisory stress tests, as only such bank-specific stress tests adequately consider the business model and risks of specific institutions. The supervisory stress test could, however, serve as a usual benchmark for the discussion.

Eventually, EAPB would also like to point out that Pillar II Guidance is usually determined by the competent authority by already taking into account the level of the capital conservation buffer since both measures are addressing the same aim which is to safeguard that credit institutions have sufficient capital to absorb losses in times of stress. Hence, EAPB thinks that it would be prudent to clarify that competent authorities have to take this capital buffer into account when determining the Pillar II Guidance. Otherwise, this would result in a duplication of measures which are addressing the same aim.

CRD article	Proposed amendment 5
104a	1. Competent authorities shall impose the additional own funds requirement referred to in Article 104(1)(a) only where, on the basis of the reviews carried out in accordance with Articles 97 and 101, they ascertain any of the following situations for an individual

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	institution: (a) the institution is exposed to risks or elements of risks that are not covered ~~or not sufficiently covered by~~ the own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013 as specified in paragraph 2; (…) ~~(e) the institution repeatedly fails to establish or maintain an adequate level of additional own funds as set out in Article 104b(1).~~ (…) **1a. Competent authorities may impose an additional own funds requirement referred to in Article 104(1)(a) where, on the basis of the reviews carried out in accordance with Articles 97 and 101, they ascertain that an institution repeatedly fails to establish or maintain an adequate level of additional own funds as set out in Article 104b(1). In this context, competent authorities shall take into account the overall economic situation and shall require institutions to disclose to it the reasons for the failure.** (…) 2. For the purposes of paragraph 1(a), risks or elements of risk shall only be considered as not covered ~~or not sufficiently covered~~ by the own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013 where the amounts, types and distribution of capital considered adequate by the competent authority following the supervisory review of the assessment carried out by institutions in accordance with the first paragraph of Article 73, are higher than the institution's own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013. For the purposes of the first subparagraph, the capital considered adequate shall cover all material risks or elements of such risks that are not subject to a specific own funds requirement. ~~This may include risks or elements of risks that are explicitly excluded from the own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013.~~ (…) 4. The institution shall meet the additional own funds requirement referred to in Article 104(1)(a) with own funds instruments subject to the following conditions: (a) at least three quarters of the additional own funds requirement shall be met with Tier 1 capital; (b) at least three quarters of the Tier 1 capital shall be composed of CET 1 capital. (…) ~~6. EBA shall develop draft regulatory technical standards how the risks and elements of risks referred to in paragraph 2 shall be measured. EBA shall ensure that the guidelines are proportionate in~~ ~~light of:~~

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	~~(a) the implementation burden on institutions and competent authorities; and~~ ~~(b) the possibility that the general higher level of capital requirements that apply where institutions do not use internal models may justify the imposition of lower capital requirements when assessing risks and elements of risks in accordance with paragraph 2.~~ ~~EBA shall submit those draft regulatory technical standards to the Commission by [one year after entry into force].~~
104b	1. Pursuant to the strategies and processes referred to in Article 73 and after consulting the competent authority **which shall take into account the level of the capital conservation buffer**, institutions shall establish an adequate level of own funds that is sufficiently above the requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013 and in this Directive, including the additional own funds requirements imposed by the competent authorities in accordance with Article 104(1)(a),in order to ensure that: (a) cyclical economic fluctuations do not lead to a breach of those requirements; and (b) the institution's own funds can absorb, without breaching the own funds requirements set out in Parts Three, Four, Five and Seven of Regulation (EU) No 575/2013 and the additional own funds requirements imposed by the competent authorities in accordance with Article 104(1)(a)~~, potential losses identified pursuant to the supervisory stress test referred to in Article 100~~.

Maximum distributable amount (MDA) and combined buffer requirement:

In article 141a, the MDA should be disconnected from MREL. In particular a lack of eligible liabilities should not trigger MDA restrictions. Therefore, article 141a (2) c) should be deleted because in a hypothetical systemic crisis situation the market for eligible liabilities could be globally closed or at least extremely difficult (temporary lack of appetite for this type of instrument), making it probably impossible for a bank to roll over MREL eligible liabilities that fall below 12 months residual maturity. This can arise for reasons unconnected to the health of the bank in question. MDA restrictions on a bank with no issue on capital could trigger a lack of confidence, resulting in a systemic crisis (domino effect).

EAPB further suggests clarifying article 141a (4) which stipulates that the MDA shall be reduced by disbursements according to (2) a), b) and c). However, these disbursements are already deducted in accordance with national accounting rules and IFRS for the calculation of the interim/year-end profits. The current wording could thus be interpreted in a way that the same disbursements would have to be deducted twice.

CRD article	Proposed amendment 6
141a	2. By way of derogation from paragraph 1, an institution shall not be considered as failing to meet the combined buffer requirement for the purposes of Article 141 where all the following conditions are met: (a) the institution meets the combined buffer requirement defined in Article 128(6) and each of the requirements referred to in points (a), (b) and (c) of paragraph 1;

	(b) the failure to meet the requirements referred to in point (d) of paragraph 1 is exclusively due to the inability of the institution to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013; ~~(c) the failure to meet the requirements referred to in point (d) of paragraph 1 does not last longer than 6 months~~

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