Specific comments on CRR Review Proposals

Own Funds Instruments:

The European Commission's proposal foresees a change in the criteria for AT1- and T2-capital instruments by stipulating that these instruments must be directly issued by the respective institution. This requirement is obviously intended to align the criteria for own funds instruments with the criteria for eligible liabilities. EAPB opposes the introduction of this criterion as it goes beyond the BCBS' standards and does not create any prudential benefit as indirectly issued capital instruments are also immediately available for loss absorption. Therefore, no changes should be made in articles 52 and 63.

The current AT1 distribution regime includes a link between interest payments and the capital preservation rules of the relevant national corporate law. To ensure a level playing field this should be disentangled from national law by amending the definition of distributable items in the CRR.

Article 63 (d) stipulates that all T2-instruments should rank below eligible liabilities which should be included in the provisions of the instruments or the loans qualifying as T2. As this condition is currently not included in any T2 instruments' documentation, this change would automatically make any existing T2-instrument non-eligible for the calculation of own funds. Grandfathering rules should thus be included for existing T2-instruments to avoid making an entire class of own funds instruments non-eligible upon introduction of this new framework. Further, EAPB suggests clarifying that provisions governing the subordinated loans can be either of a contractual or a statutory nature in order to avoid misunderstandings respectively deviating interpretations.

CRR article	Proposed amendment 1
4 (128)	(128) 'distributable items' means the amount of the profits at the end of the last financial year plus any profits brought forward and reserves available for that purpose before distributions to holders of own funds instruments less any losses brought forward, profits which are non-distributable pursuant to provisions in legislation or the institution's bye-laws and sums placed to non-distributable reserves in accordance with applicable national law or the statutes of the institution, those losses and reserves being determined on the basis of the individual accounts of the institution and not on the basis of the consolidated accounts. **For the purpose of Article 52(1)(l)(i) restrictions on the distribution of reserves under applicable national law shall be disregarded.**
52 (1)	(a) the instruments are ~~directly~~ issued ~~by an institution~~ and fully paid up
63	(a) the instruments are ~~directly~~ issued or the subordinated loans are ~~directly~~ raised, as applicable, by an institution and fully paid-up; (d) the claim on the principal amount of the instruments under the provisions governing the instruments or the claim of the principal amount of the subordinated loans under the **statutory or contractual** provisions governing the subordinated loans, as applicable, ranks below any claim from eligible liabilities instruments;
488a	By way of derogation from Article 63 items that were issued prior to the application of this regulation shall continue to qualify as Tier 2 instruments provided they comply with Article 63(a), (b), (c), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o) and (p). The respective instruments shall qualify in the amount of 90 % in the first year of application of this regulation. In the following years this percentage shall subsequently be reduced by 10 percentage points every year to 0 % in the tenth year of application of this regulation.

Avenue de la Joyeuse Entrée 1-5, B–1040 Brussels
phone: +32 / 2 / 286 90 71 • fax: +32 / 2 / 231 03 47 • e-mail: info@eapb.eu • website: www.eapb.eu

Eligible Liabilities:

MREL-eligible liabilities are an important part of the funding structure of a bank and are part of managing interest rate- and liquidity risks, and EAPB takes the view that mandatory directions of the resolution authority might interfere with the institution's management of these risks and/or any directions in this context given by the competent supervisory authorities. In that regard, EAPB is favourable towards the proposal to apply mandatory subordination only to G-SIIs, as this would be in line with the TLAC-standard. In this context, EAPB supports the new rules, which leave it to the discretion of the resolution authority to take into account the specificities of the bank concerned, and to determine the extent of subordination on a case-by-case basis.

We are in favour of the proposal's intention to not restrict eligibility to subordinated instruments, but to maintain senior unsecured debt counting as eligible for meeting the MREL requirements within the new approach of harmonising the ranking of senior unsecured debt. Had senior unsecured debt been excluded, this would have significantly increased the costs of fulfilling the MREL requirements for our members, given their low-risk nature which translates into a small amount of capital in absolute terms, and their reliance on whole sale funding, resulting in a liability structure driven by senior unsecured debt.

However, some of the requirements in CRR article 72b (2) go beyond the requirements in the TLAC term sheet and appear not to be aligned with the objectives of TLAC/MREL and as such unnecessarily restrict European banks.

To avoid disproportionate costs for new issues and in order not to unnecessarily constrict market depth for issues, we are asking for a differentiation concerning MREL-eligibility between the original BRRD-criteria and the newly introduced TLAC-criteria. To this end, it would make sense to solely apply the criteria taken over from the TLAC-term sheet to the liabilities to be likewise newly issued pursuant to article 108 (2) of the BRRD-draft which are at the same time necessary to meet the subordination requirements as called for by the TLAC-term sheet.

In particular we are concerned regarding the additional criteria that have been introduced in CRR article 72b (2) g), k), m), and o) including set-off/netting arrangements, authority approval for redemption, acceleration clauses as well as contractual bail-in provisions, which are outlined further below.

Set-off or netting arrangements
Regarding set-off or netting arrangements in CRR article 72 (2) g), we suggest to only exclude liabilities with contractual sett-off or netting arrangements from the MREL calculations. Such contracts are mostly based on reciprocal claims of the same type and in the event of default would be offset against each other.

Calls, early redemptions and repurchases
Furthermore, CRR article 72b (2) k) makes eligible liabilities subject to the supervisory approval regime that today applies to CET1-, AT1- and T2-instruments. However, making eligible liabilities subject to article 77 and 78 introduces a significant new restriction on institutions' abilities to optimise funding and capital structure because they would be subject to time consuming and costly processes with applications, supervisory review, documentation etc. With this change, EAPB would further propose amendments to take eligible liabilities out of the scope of articles 77 and 78.

As long as an institution does not execute early calls, redemptions or repayments that would put the institutions in breach of MREL requirements, such a supervisory approval process should not be a requirement. Accordingly we suggest deleting this criterion.

Avenue de la Joyeuse Entrée 1-5, B–1040 Brussels
phone: +32 / 2 / 286 90 71 • fax: +32 / 2 / 231 03 47 • e-mail: info@eapb.eu • website: www.eapb.eu

No acceleration rights
Concerning 'no acceleration rights' in paragraph 2 m), we note that termination rights if the issuer does not meet its payment obligations is a market standard and would affect a large portion of existing debt programs. Consequently, if a contractual condition for no acceleration of liabilities were required as a prerequisite for MREL eligibility, it would potentially cause serious disruptions and costs to the debt programs of European banks when renegotiating the debt programs. Furthermore it would be extremely costly if senior unsecured liabilities would not be counted eligible for MREL and TLAC because of the no acceleration clause and therefore had to be replaced with alternative funding. Therefore, we suggest waiving this MREL criterion.

Contractual bail-in clauses
Given the statutory bail-in provisions according to European law, we believe that introducing contractual bail-in provisions as laid down in CRR article 72b (2) o) would lead to a duplication without any added value. On the contrary, MREL eligibility is a subset of bail-inable instruments and liabilities which are not eligible for MREL may be bail-inable. As such, we believe that introducing contractual bail-in provisions might give investors the false impression that instruments without such a clause are exempted from bail-in which is not the case. Moreover, this provision implies an inappropriate extension of the proposed provisions concerning contractual bail-in clauses for non-Member States in BRRD article 55. Consequently, we are of the opinion that an additional inclusion of this criterion is not necessary.

Grandfathering
Furthermore, EAPB is concerned that it will be impossible to meet MREL requirements in the short term without being able to include current outstanding senior unsecured debt. Therefore, it is necessary that some form of grandfathering will be introduced to allow such debt to fulfil the MREL requirements in a transition period.

With regards to article 72e deductions of eligible liabilities only apply to G-SIIs. However, article 79, which treats waivers from deductions for all own funds instruments as well as eligible liabilities, does not state that the exemption for holding eligible liabilities is only relevant for G-SIIs. Article 79 (1) needs to be amended accordingly.

The content of article 80 has simply been extended to now include a review requirement for eligible liabilities instruments in parallel to the requirement for monitoring own funds. This extension in practice exponentially increases the workload for the EBA, as there is a myriad of instruments across the EU that will potentially qualify as eligible liabilities. It is, therefore, unclear how such monitoring would actually be undertaken. EAPB would propose to delete eligible liabilities from this article, especially as there is no requirement in either the TLAC term sheet or the current BRRD that would necessitate the inclusion of this monitoring requirement.

In CRR article 83, the proposal for an introductory phase for instruments issued by a special purpose entity limiting eligibility of these instruments for own funds purposed until 31 December 2021 does not seem agreeable, especially as there are no 'real' grandfathering arrangements, i.e. the instruments become non-eligible from one day to the next in their entirety.

CRR article	**Proposed amendment 2**
72b	1. Liabilities shall qualify as eligible liabilities instruments, provided they comply with the conditions laid down in this Article and only to the extent specified in this Article. 2. Liabilities shall qualify as eligible liabilities instruments provided that all of the following conditions are met: (…)

Avenue de la Joyeuse Entrée 1-5, B–1040 Brussels
phone: +32 / 2 / 286 90 71 • fax: +32 / 2 / 231 03 47 • e-mail: info@eapb.eu • website: www.eapb.eu

	(g) the liabilities are not subject to any **contractual** set off arrangements or netting rights that would undermine their capacity to absorb losses in resolution; (…) ~~(k) the liabilities may only be called, redeemed, repurchased or repaid early where the conditions laid down in Articles 77 and 78 are met;~~ ~~(m) the provisions governing the liabilities do not give the holder the right to accelerate the future scheduled payment of interest or principal, other than in case of the insolvency or liquidation of the resolution~~ ~~(o) the contractual provisions governing the liabilities require that, where the resolution authority exercises write down and conversion powers in accordance with Article 48 of Directive 2014/59/EU, the principal amount of the liabilities be written down on a permanent basis or the liabilities be converted to Common Equity Tier 1 instruments.~~
77	Article 77 Conditions for reducing own funds ~~and eligible liabilities~~ An institution shall obtain the prior permission of the competent authority to do either or both of the following: (a) reduce, redeem or repurchase Common Equity Tier 1 instruments issued by the institution in a manner that is permitted under applicable national law; (b) effect the call, redemption, repayment or repurchase of Additional Tier 1, Tier 2 ~~or eligible liabilities instruments~~ as applicable, prior to the date of their contractual maturity.
78	Article 78 Supervisory permission for reducing own funds ~~and eligible liabilities~~ 1. The competent authority shall grant permission for an institution to reduce, repurchase, call or redeem Common Equity Tier 1, Additional Tier 1, Tier 2 ~~or eligible liabilities instruments~~ where either of the following conditions is met: (a) earlier than or at the same time as the action referred to in Article 77, the institution replaces the instruments referred to in Article 77 with own funds ~~or eligible liabilities~~ instruments of equal or higher quality at terms that are sustainable for the income capacity of the institution; (b) the institution has demonstrated to the satisfaction of the competent authority that the own funds ~~and eligible liabilities~~ of the institution would, following the action in question, exceed the requirements laid down in this Regulation, in, Directive 2013/36/EU and in Directive 2014/59/EU by a margin that the competent authority considers necessary. The competent authority shall consult the resolution authority before granting that permission. ~~Where an institution provides sufficient safeguards as to its capacity to operate with own funds above the amount of the requirements laid down in this Regulation, in Directive 2013/36/EU and in Directive 2014/59/EU, the resolution authority, after consulting the competent authority, may grant a general prior permission to that institution to effect calls, redemptions, repayments or repurchases of eligible liabilities instruments, subject to~~

4

	~~criteria that ensure that any such future actions will be in accordance with the conditions laid down in points (a) and (b) of this paragraph. This general prior permission shall be granted only for a certain time period, which shall not exceed one year, after which it may be renewed. The general prior permission shall only be granted for a certain predetermined amount, which shall be set by the resolution authority. Resolution authorities shall inform the competent authorities about any general prior permission granted.~~ ~~Where an institution provides sufficient safeguards as to its capacity to operate with own funds above the amount of the requirements laid down in this Regulation, in Directive 2013/36/EU and in Directive 2014/59/EU, the competent authority, after consulting the resolution authority, may grant that institution a general prior permission to that institution to effect calls, redemptions, repayments or repurchases of eligible liabilities instruments, subject to criteria that ensure that any such future actions will be in accordance with the conditions laid down in points (a) and (b) of this paragraph. This general prior permission shall be granted only for a certain time period, which shall not exceed one year, after which it may be renewed. The general prior permission shall be granted for a certain predetermined amount, which shall be set by the competent authority. In case of Common Equity Tier 1 instruments, that predetermined amount shall not exceed 3% of the relevant issue and shall not exceed 10 % of the amount by which Common Equity Tier 1 capital exceeds the sum of the Common Equity Tier 1 capital requirements laid down in this Regulation, in Directive 2013/36/EU and in Directive 2014/59/EU by a margin that the competent authority considers necessary. In case of Additional Tier 1 instruments or Tier 2 instruments, that predetermined amount shall not exceed 10% of the relevant issue and shall not exceed 3 % of the total amount of outstanding Additional Tier 1 instruments or Tier 2 instruments, as applicable. In case of eligible liabilities instruments, the predetermined amount shall be set by the by the resolution authority after it has consulted the competent authority.~~ ~~Competent authorities shall withdraw the general prior permission where an institution breaches any of the criteria provided for the purposes of that permission.~~ (...)
80	Article 80 Continuing review of the quality of own funds ~~and eligible liabilities~~ 1. EBA shall monitor the quality of own funds ~~and eligible liabilities instruments~~ issued by institutions across the Union and shall notify the Commission immediately where there is significant evidence that those instruments do not meet the respective eligibility criteria set out in this Regulation. Competent authorities shall, without delay and upon request by EBA, forward all information to EBA that EBA considers relevant concerning new capital instruments or new types of liabilities issued in order to enable EBA to monitor the quality of own funds ~~and eligible liabilities~~ instruments issued by institutions across the Union. (...) 3. EBA shall provide technical advice to the Commission on any significant changes it considers to be required to the definition of own funds ~~and eligible liabilities~~ as a result of any of the following:

Avenue de la Joyeuse Entrée 1-5, B–1040 Brussels
phone: +32 / 2 / 286 90 71 • fax: +32 / 2 / 231 03 47 • e-mail: info@eapb.eu • website: www.eapb.eu

	(...)
83	Additional Tier 1 and Tier 2 instruments issued by a special purpose entity, and the related share premium accounts, are included ~~until 31 December 2021~~ in qualifying Additional Tier 1, Tier 1 or Tier 2 capital or qualifying own funds, as applicable, only where the following conditions are met: (...)

Own funds requirements for exposures in the form of units or shares in collective investment undertakings (CIUs):

EAPB believes that the Commission's proposal to amend article 132 CRR would have unjustified negative effects on institutions which intend to rely on third parties for the calculation of the own funds requirements for investments into CIUs. At the moment institutions can calculate their own funds requirements by either calculating an average risk weight for its exposures in the form of units or shares in the CIUs (article 132 (4)) or by relying on third parties like the CIU management company to calculate the average risk weight. The newly proposed article 132 (4) however changes the latter method in two ways. First, banks shall calculate the risk-weighted exposure amount for their exposures in a CIU by multiplying the risk-weighted exposure amounts of the CIU's exposures by the share of the bank in the CIU. Second, if institutions rely on third parties to calculate the risk weighted exposure amount of the CIU's exposures they would have to multiply the own funds requirements with a factor of 1.2 which equals a rise in capital requirements of 20 %.

This is not justified as the credit risk stemming from investments into funds does not rise solely because a third party is involved in the calculation. Further, institutions regularly receive data from the CIU's management company which enables them to assess whether the calculation is correct or not.

What is more, the investment company that performs the calculation would - unlike a bank that uses the look-through approach - not be able to use the accounting value of the bank for the calculation of the risk-weighted exposure amount of the CIU's exposures. They would have to take the market value instead. This in turn would first result in departing from the principle to use accounting values as exposure values under the standardised approach (CRR article 111 (1)). Second, increases in value after the purchase of the CIU would have to be backed with capital.

From our point of view, the risk weighted exposure value of a unit or share in a CIU should be calculated by multiplying the average risk weight of the CIU exposures with the accounting value of the positions in the CIU held by the institution. If market values of the CIU's underlying positions remain constant this leads to the same results as the method proposed by the Commission and the BCBS. If the market values of the underlying positions rise, banks that account their positions in a CIU by using amortized cost build up hidden reserves to the same amount. These reserves fully cover potential additional losses from the higher market values.

Therefore, the current proposal would discriminate indirect investments compared to direct investments which does not seem to be justified. EAPB therefore suggests keeping the current provision in article 132 in place and not introducing the proposed rule.

CRR article	Proposed amendment 3
132 (1)	Institutions shall calculate the risk-weighted exposure amount for their exposures in the form of units or shares in a CIU by multiplying the **average risk weight** ~~risk-weighted~~

	~~exposure amount~~ of the CIU's exposures, calculated in accordance with the approaches referred to in the first subparagraph of paragraph 2, with the **accounting value** ~~the percentage~~ of units or shares held by the institutions.
132 (4)	4. Institutions that do not have adequate data or information to calculate the risk weighted exposure amount of a CIU's exposures in accordance with the approaches set out in Article 132a may rely on the calculations of a third party, provided that all of the following conditions are met: (a) the third party is one of the following: (i) the depository institution or the depository financial institution of the CIU, provided that the CIU exclusively invests in securities and deposits all securities at that depository institution or depository financial institution; (ii) for CIUs not covered by point (i), the CIU management company, provided that the company meets the condition set out in point (a) of paragraph 3. (b) the third party carries out the calculation in accordance with the approaches set out in paragraphs 1, 2 and 3 of Article 132a, as applicable; (c) an external auditor has confirmed the correctness of the third party's calculation. ~~Institutions that rely on third-party calculations shall multiply the risk weighted exposure amount of a CIU's exposures resulting from those calculations by a factor of 1,2.~~
132a (1)	Where the conditions of Article 132(3) are met, institutions that have sufficient information about the underlying exposures of a CIU shall look through to those exposures to calculate the **average risk weight** ~~risk-weighted exposure amount~~ of the CIU, risk weighting all underlying exposures of the CIU as if they were directly held by those institutions.

<u>Counterparty Credit Risk:</u>

The new standardised approach for counterparty credit risk ('SA-CCR') generally leads to higher own funds requirements than the currently applicable Mark-to-Market Method ('MtMM'). This even holds true for credit institutions whose derivatives business is collateralised or is subject to netting arrangements to a high degree. One of the reasons for this increase in own funds requirements is that according to current market practice, market risks are usually not hedged on the level of counterparties. Further, the hedging set definitions for the purpose of the calculation of the potential future exposure ('PFE') are rather restrictive (e.g. regarding interest rate risk and FX-risk). In order to mitigate the increase in own funds requirements EAPB therefore proposes to delete the α-factor in article 274 (2).

Another important aspect concerning the SA-CCR is the specification of the material risk drivers (article 277 (6)) and the supervisory delta (article 279 (4)) by EBA. As both aspects are essential for a credit institution's IT system and since their implementation is very complex and can take a lot of time, it would be of utmost importance to have clarity about the respective specification as early as possible. The current EBA mandates in conjunction with the date of the first application of this regulation would give credit institutions too little time (18 months). EAPB would thus suggest giving credit institutions at least 30 months for the implementation.

EAPB would also like to point out that even the proposed simplified approach for counterparty credit risk would lead to a higher complexity, increased data requirements and a more complicated management of counterparty credit risk. This seems counterintuitive particularly in the case of credit institutions with low-risk derivative positions. Consequently, we think that credit institutions with such positions should be allowed to continue using the MtMM instead of the proposed simplified standardised approach.

With regard to the own funds requirements for exposures to a CCP which retains variation margin against a transaction, EAPB supports the view that the requirement to apply a minimum margin period of risk of 10 business days (article 304 (3) d)) seems too restrictive. As there are numerous prudential requirements ensuring a high quality of the margining process of CCPs (e.g. daily-re-margining), a reduction of the aforementioned period would be appropriate.

CRR article	Proposed amendment 4
274 (2)	2. Institutions shall calculate the exposure value of a netting set under the Standardised Approach for Counterparty Credit Risk Method as follows: Exposure value = ~~α * (~~RC + PFE~~)~~ where: RC = the replacement cost calculated in accordance with Article 275; PFE = the potential future exposure calculated in accordance with Article 278. ~~α = 1,4.~~
304 (3)	(d) where a CCP retains variation margin against a transaction and the institution's collateral is not protected against the insolvency of the CCP, the institution shall apply a margin period of risk that is the lower between one year and the remaining maturity of the transaction, with a floor of ~~10~~ **5** business days.

Market Risk Framework:

The CRR proposals introduce a new market risk framework to Union law establishing a more proportionate approach to trading books. In general, the new standardised approach as well as the new internal model approach is more conservative than the BCBS' respective standards which are being implemented. With regard to the standardised approach the BCBS' standard foresees that the own funds requirement equals the sum of the requirements for delta, vega and curvature risk under the scenario which results in the largest requirement. In contrast, the CRR proposal is much stricter as it does not only focus on one scenario but instead stipulates that the own funds requirement equals the sum of the largest requirements for the delta, vega and curvature risk as calculated under any of the scenarios. EAPB suggests not deviating from the BCBS' standards in this regard as that would lead to an unjustified competitive disadvantage for European credit institutions.

Article 325a (1) specifies criteria that have to be fulfilled for middle-sized trading books in order to derogate from the market risk calculation laid down in the simplified standard approach for market risk. EAPB generally supports the view that the criteria in article 325a are not justified from a prudential perspective since they only take into account the size of the trading book. However, the size of an institution's trading book does not give any indication about the materiality of the associated market risk for a given institution. Therefore, other criteria should be used to determine which institutions should be allowed to use the simplified standardised approach. One example for an appropriate criterion could be a threshold for the relation of the profit or loss of the trading book and the level of own funds.

Further, EAPB would light to point out that given the balance sheets of public and promotional banks which display of very low risk profiles, the thresholds for middle-sized trading books could be too restrictive. This would imply additional capital requirements that could otherwise be used for promotional purpose and the financing of public policy objectives.

Finally, EAPB generally welcomes the transition phase provided for by article 501b (1) which sets out a reduction of the own funds requirements for market risk of 35 % for the first 3 years after the introduction of the revised market risk framework.

CRR article	Proposed amendment 5
325a (1)	An institution may calculate the own funds requirements for market risks with the approach referred to in point (c) of Article 325(1) provided that the **profit/loss of the trading book activities of the last 12 months do not exceed 0,1 % of own funds** ~~size of the institution's on- and off-balance sheet business subject to market risks is equal to or less than the following thresholds on the basis of an assessment carried out on a monthly basis:~~ ~~(a) 10 % of the institution's total assets;~~ ~~(b) EUR 300 million~~

It also remains unclear, if an institution that is qualified for the small trading book under the current CRR will – upon the transition to the amended CRR – have to apply for a new authorisation or if the current authorisation will automatically be valid. Therefore, EAPB would highlight the importance of a clear definition for 'trading-book business' based on CRR article 104.

Article 104 (2) lays down the requirements based on which instruments shall be assigned to the trading book. Point e) deviates from what has been agreed at the level of the BCBS. The BCBS refers to 'instruments held as accounting trading assets or liabilities' (BCBS352 paragraph 16(a)) where in a footnote it is explained that these instruments would be designated as 'held for trading' and that these instruments would be fair valued through the profit and loss account. What was originally intended to only be a further explanation or a necessary condition at most - meaning: all 'such' instruments are necessarily fair valued - seems to have unintentionally become a sufficient criterion - meaning: all fair valued instruments are 'such' instruments - including for example available for sale assets with no trading intent. This does not seem intended. Further, the current distinction does not seem appropriate as the assignment to the trading book should be based on the existence of trading intent and not the applicable accounting standard. This would also be in line with the BCBS standard. Thus, CRR article 104 (2) should be amended accordingly.

Another issue regarding the distinction between the banking and the trading book is the treatment of investments into CIUs. Article 104 (3) d) stipulates that investments where the institution cannot look through the fund on a daily basis or where the institution cannot obtain real prices for its equity investment in the fund on a daily basis shall always be assigned to the banking book and vice versa. On the one hand, even very large and liquid funds currently provide the aforementioned information solely on a periodic basis. This means that even in this case the respective investments of institutions could not be assigned to the trading book. This would be contrary to current market practice and the intention which is pursued with the respective investment. On the other hand, many institutions usually assign certain investments in CIUs to the banking book even in case they can look through the fund on a daily basis. The reason for this practice is that institutions sometimes choose to rather indirectly invest in certain financial instruments instead of directly investing into them. If in both cases the intention of the institution is to hold the assets until maturity, there seems to be no reason for treating a direct and an

Avenue de la Joyeuse Entrée 1-5, B–1040 Brussels
phone: +32 / 2 / 286 90 71 • fax: +32 / 2 / 231 03 47 • e-mail: info@eapb.eu • website: www.eapb.eu

indirect investment in a different way just because institutions can look through a fund on a daily basis or not. Therefore, EAPB suggest keeping the current rules in the CRR in place.

According to article 104a (1) a re-classification of a trading book position as a non-trading book position or conversely a non-trading book position as a trading book position is only justified under exceptional circumstances. However, such a re-classification shall be irrevocable according to article 104a (5). Since exceptional circumstances can occur even after a re-classification and thus, require another re-classification, EAPB believes that article 104a (5) should be deleted as this provision does not provide for a prudentially sound solution.

CRR article	Proposed amendment 6
104 (2)	2. Positions in the following instruments shall be assigned to the trading book: (a) instruments that meet the criteria for the inclusion in the correlation trading portfolio ('CTP'), as referred to in paragraphs 6 to 9; (b) financial instruments that are managed on a trading desk established in accordance with Article 104b; (c) financial instruments giving rise to a net short credit or equity position; (d) instruments resulting from underwriting commitments; (e) financial assets or liabilities **held as accounting trading assets or liabilities** ~~measured at fair value~~; (f) instruments resulting from market-making activities; ~~(g) collective investment undertakings, provided that they meet the conditions specified in paragraph 10 of this Article;~~ **(g)** listed equities; **(h)** trading-related SFTs; **(i)** options including bifurcated embedded derivatives from instruments in the non-trading book that relate to credit or equity risk. For the purposes of point (c) of this paragraph, an institution shall have a net short equity position where a decrease in an equity price results in a profit for the institution. Correspondingly, an institution shall have a net short credit position where a credit spread increase or deterioration in the creditworthiness of an issuer or group of issuers results in a profit for the institution.
104 (3)	3. Positions in the following instruments shall not be assigned to the trading book: (a) instruments designated for securitisation warehousing; (b) real estate holdings; (c) retail and SME credit; ~~(d) other collective investment undertakings than the ones specified in point (g) of paragraph 2 in which the institution cannot look through the fund on a daily basis or where the institution cannot obtain real prices for its equity investment in the fund on a daily basis;~~ (**d**) derivative contracts with underlying instruments referred to in point (a) to (d); (**e**) instruments held for the purpose of hedging a particular risk of a position in an instrument referred to in point (a) to (e).
104a (5)	~~5. The re-classification of a position in accordance with this article shall be irrevocable.~~

Avenue de la Joyeuse Entrée 1-5, B–1040 Brussels
phone: +32 / 2 / 286 90 71 • fax: +32 / 2 / 231 03 47 • e-mail: info@eapb.eu • website: www.eapb.eu

With regards to article 104 (4) and 104a (2), it remains unclear from the current drafting whether these two paragraphs are interrelated. Namely, a clarification is needed, whether the exceptional circumstances of re-classification are limited only to the article 104 (4).

In article 325a (5), the 'grace period' of three months for institutions that surpass the eligibility thresholds for the use of the Simplified standardised approach and consequently will have to apply the standardised approach is way too short. Given the high degree of complexity of the standardised approach the grace period should be longer to allow for an adequate implementation of the standardised approach.

The practical and financial costs of running two models in parallel – institutions that choose to use the internal models approach will also have to use the standardised approach as a fall-back – will be immense. This is in contradiction to the concept of a level playing field, as only the largest banks will likely have the capacity to bear the costs of running to models in parallel. Consequentially, smaller banks will for all practical purposes be deprived of the possibility to apply the internal models approach, creating an unfair disadvantage for smaller banks. Therefore, article 325ba (2b) should be amended. Further, the requirement for the reporting of own funds data for market risks calculated under the standardized approach (article 325 ba (2) b), while using the internal model approach should be changed from monthly to quarterly as the current COREP reporting is done on a quarterly basis.

Finally, it is unclear why article 325bb (2) imposes additional own funds requirement for default risk, as a default risk charge is already being applied.

CRR article	Proposed amendment 7
325a (5)	Institutions shall cease to calculate the own fund requirements for market risks in accordance with paragraph 1 within **12** ~~three~~ months of one of the following cases: (…)
325ba (2b)	2. Institutions that have been granted the permission referred to in paragraph 1 to use their internal models for each trading desk shall report to the competent authorities as follows: (a) the weekly unconstrained expected shortfall measure UESt calculated in accordance with paragraph 5 for all the positions in the trading desk which shall be reported to the competent authorities on a monthly basis. (b) the monthly own funds requirements for market risks calculated in accordance with ~~Chapter 1a of this Title as if the institution not been granted the permission referred to in paragraph 1 and with~~ all the positions attributed to the trading desk considered on a standalone basis as a separate portfolio. These calculations shall be reported to the competent authorities on a **quarterly** ~~monthly~~ basis.
325bb (2)	~~2. Institutions holding positions in traded debt and equity instruments that are included in the scope of the internal default risk model and attributed to trading desks referred to in paragraph 1 shall fulfil an additional own funds requirement expressed as the higher of the following values:~~ ~~(a) the most recent own funds requirement for default risk calculated in accordance with Section 3;~~ ~~(b) the average of the amount referred to in point(a) over the preceding 12 weeks~~

In the new market risk framework, articles 325ai and 325al establish risk weights for credit spread risk (non-securitisations) and for credit spread risk securitisations (CTP) separately for ‘promotional lenders’. The risk weights assigned to this category seem unjustifiably high if compared to the weights assigned to central, regional or local governments. This is particularly surprising given the close ties between the promotional banks and their central, regional or local government shareholders and leaves promotional banks worse off when acquiring the funding needed for their promotional activities or auxiliary transactions. Therefore, EAPB would welcome a reconsideration of the risk weights which allows reflecting the low risk underlying their business model. It should be considered to put credit institutions incorporated or established by a central government, a regional government or a local authority and promotional lenders in the same bucket as the respective central, regional or local governments.
Moreover, article 325v (4) provides for an exemption from the own funds requirements for residual risks if certain conditions are met. One of them is the requirement that the instrument shall perfectly offset the market risks of another position of the trading book (article 325v (4) c)). In the light of the importance of the possibility for banks to effectively hedge the risk arising from client products it would be advisable to foresee such an exemption also in case not every feature of the respective positions is perfectly matching. For example, non-matching features could include the maturities of the positions or upfront payments.

CRR article	Proposed amendment 8
325ai	Risk weights for credit spread risk (non-securitisations) 1. Risk weights shall be the same for all the maturities (0,5 years, 1 year, 3 years, 5 years, 10 years) within each bucket. Credit quality step 1 to 3:

Bucket number	Sector	Risk Weight
1	Central government, including central banks, of a Member State	0.50%
2	Central government, including central banks, of a third country, multilateral development banks and international organisations referred to in Article 117(2) and 118	0.5%
3	Regional or local authority and public sector entities **including credit institutions incorporated or established by a central government, a regional government or a local authority and promotional lenders**	1.0%
4	Financial sector entities ~~including credit institutions incorporated or established by a central government, a regional government or a local authority and promotional lenders~~	5.0%

Credit quality step 4 to 6:

Bucket number	Sector	Risk Weight
11	Central government, including central banks, of a third country, multilateral development banks and international organisations referred to in Article 117(2)	3.0%

Avenue de la Joyeuse Entrée 1-5, B–1040 Brussels
phone: +32 / 2 / 286 90 71 • fax: +32 / 2 / 231 03 47 • e-mail: info@eapb.eu • website: www.eapb.eu

		and 118	
	12	Regional or local authority and public sector entities **including credit institutions incorporated or established by a central government, a regional government or a local authority and promotional lenders**	4.0%
	13	Financial sector entities ~~including credit institutions incorporated or established by a central government, a regional government or a local authority and promotional lenders~~	12.0%

325al Risk weights for credit spread risk securitisations (CTP)

Risk weights shall be the same for all maturities (0,5 year, 1 year, 3 years, 5 years, 10 years) within each bucket.

Credit quality step 1 to 3:

Bucket number	Sector	Risk Weight
1	Central government, including central banks, of a Member State	4%
2	Central government, including central banks, of a third country, multilateral development banks and international organisations referred to in Article 117(2) and 118	4%
3	Regional or local authority and public sector entities **including credit institutions incorporated or established by a central government, a regional government or a local authority and promotional lenders**	4%
4	Financial sector entities ~~including credit institutions incorporated or established by a central government, a regional government or a local authority and promotional lenders~~	8%

Credit quality step 4 to 6:

Bucket number	Sector	Risk Weight
11	Central government, including central banks, of a third country, multilateral development banks and international organisations referred to in Article 117(2) and 118	13%
12	Regional or local authority and public sector entities **including credit institutions incorporated or established by a central government, a regional government or a local authority and promotional lenders**	13%
13	Financial sector entities ~~including credit institutions incorporated or established by a central government,~~	16%

Avenue de la Joyeuse Entrée 1-5, B–1040 Brussels
phone: +32 / 2 / 286 90 71 • fax: +32 / 2 / 231 03 47 • e-mail: info@eapb.eu • website: www.eapb.eu

			~~a regional government or a local authority and promotional lenders~~		

Own funds requirements for credit valuation adjustment risk (CVA-risk):

The CRR proposal foresees (article 384 (1)) that the counterparty credit risk exposure value ('EAD') according to the SA-CCR is taken into account when calculating the own funds requirement for the CVA-risk. In line with the last revision of the BCBS' framework for CVA-risk, the EAD should however be adjusted by removing the alpha-multiplier.

Large Exposure Rules:

The Commission proposals stipulate that credit risk mitigation techniques must be used for the calculation of the exposure in the context of the large exposure regime when institutions are using such techniques for calculating their own funds requirements for credit risk (article 399 (1)). Currently, institutions have the option to do so. EAPB suggests keeping the current regime as the mandatory consideration of credit risk mitigation techniques causes considerable administrative burden for institutions. Further, the proposal would align the large exposure regime with the own funds regime. From our perspective, this is inappropriate from a prudential perspective as both regimes follow different aims. Thus, an alignment is not advisable as the large exposure regime does not focus on default risk but on concentration risk instead. Further, the new proposal would create the incentive to further rely on non-collateralized lending which would expose institutions to a higher credit risk.

Another change to the current rules is contained in the proposal of a new article 401 (4). This provision would require institutions to treat the part of the exposure by which the exposure to the client has been reduced through credit risk mitigation techniques as having been incurred to the protection provider rather than to the client. This means that institutions would have to split up an exposure into two parts and take them both into consideration for the large exposure rules. Currently, institutions only have to take into account the reduced amount of a collateralized exposure for the purpose of the large exposure regime. EAPB suggest keeping the current text of the CRR as the new rule would cause extensive administrative burden for institutions in certain cases. For instance, the repo markets could be severely affected as the respective collateral is adjusted every day. Thus, also the large exposure limits would have to be recalculated each day which creates excessive burden. The aforementioned effects would be even stronger in case a third party like a CCP have the discretion to decide upon the specific collateral. In these cases which constitute current market practice the affected institutions do not know ex ante which collateral will be provided and thus cannot ensure that the large exposure limits will not be breached in case of a new transaction. All these practical impediments justify keeping the current rule as the new proposal does not provide for any added value.

According to article 4 (4) EBA shall be mandated to develop draft regulatory technical standards regarding the conditions for a group of connected clients. EBA is currently in the process of developing guidelines on connected clients (EBA/CP/2016/09). These guidelines should be sufficient to specify the conditions for a group of connected clients. Further, it could cause problems giving EBA another mandate in this area since inconsistencies between the two sets of rules could occur. Eventually, giving EBA another mandate could also lead to the fact that the rules on connected clients would change frequently when guidelines and RTS will be updated. Consequently, EAPB suggest deleting the mandate in article 4 (4).

The proposed amendment to the transitional provision in article 493 (4) seems to aim at giving competent authorities the discretion to reduce the large exposure limit for exposures which are assigned with a risk-weight according to CRR article 114 (6) (i.e. not a risk-weight of 0 %). Therefore, the reference to (a) (c) (d) (e) of article 400 (1) seems to be incorrect and should be adjusted. Further, EAPB represents the view that the decision to impose lower large exposure limits should not lie within the sole discretion of national competent authorities but instead article 493 (4) (a), (b) and (c) should be applied mandatorily to all institutions in order to achieve a level playing field.

The reference to CRR article 400 (1) in the mandate provided to the EBA in article 507 seems to be unclear, since it would widen the scope of the current mandate which only refers to article 400 (1) (j). According to page 18 of the explanatory memorandum of the CRR proposal it seems however, as if the current mandate shall only be renewed. The reference to CRR article 400 (1) should thus be clarified.

In general, EAPB is of the view that the introduced changes to the large exposure regime (especially the ones in article 395) are extensive and thus, an appropriate phasing-in period should be provided for.

CRR article	Proposed amendment 9
4 (4)	~~4. EBA shall develop draft regulatory technical standards specifying in which circumstances the conditions set out in points (a) or (b) of the first subparagraph of point (39) are met.~~
399	~~1. An institution shall use a credit risk mitigation technique in the calculation of an exposure where it has used this technique to calculate capital requirements for creditrisk in accordance with Part Three, Title II and provided it meets the conditions set out in this Article. For the purposes of Articles 400 to 403, the term 'guarantee' shall include credit derivatives recognised under Part Three, Title II, Chapter 4 other than credit linked notes.";~~
401	~~4. Where an institution reduces an exposure to a client due to an eligible credit risk mitigation technique in accordance with Article 399(1), it shall treat the part of the exposure by which the exposure to the client has been reduced as having been incurred to the protection provider rather than to the client.".~~
493	4. By way of derogation from Article 395, ~~competent authorities may allow~~ institutions **shall** ~~to~~ incur one of the exposures provided for in **Article 114 (6)** ~~points (a) (c) (d) (e) of Article 400(1)~~ denominated and funded in the currency of any Member States up to the following values, after taking into account the effect of the credit risk mitigation in accordance with Articles 399 to 403: (a) 100% of the institution's Tier 1 capital until 31 December 2018; (b) 75% of the institution's Tier 1 capital until 31 December 2019; (c) 50% of the institution's Tier 1 capital until 31 December 2020.

Net Stable Funding Ratio (NSFR):

The newly established NSFR framework in the CRR proposals establishes in article 428f conditions under which some assets and liabilities can be considered as interdependent and draws a list of products whose assets and liabilities shall be treated as such. These include centralised regulated savings, promotional loans and credit and covered bonds. In order to establish a level playing field in this new framework, EAPB would welcome it if the treatment in article 428f (2) b) would be applicable to all forms of promotional loans being either passed through via on lending schemes or granted directly to the final customer. This would ensure an equal treatment of equal subjects across all Member States in the Union. In the context of interdependent assets and liabilities EAPB would however like to point out that it is not entirely clear how the 0 % ASF/RSF-factors shall be applied (e.g. treatment of overcollateralization,

Avenue de la Joyeuse Entrée 1-5, B–1040 Brussels
phone: +32 / 2 / 286 90 71 • fax: +32 / 2 / 231 03 47 • e-mail: info@eapb.eu • website: www.eapb.eu

treatment of retained covered bonds, etc.). Furthermore, clarification would be warranted on how interdependent assets and liabilities identified at the consolidated level shall be treated for the purpose of unconsolidated NSFR calculations of entities contributing assets to a cover pool of a central issuing institution, i.e. a central funding platform issuing covered bonds and subsidiaries providing cover pool assets.

EAPB also believes that conditions regarding covered bonds in article 428f (2) d) should not refer to a requirement introduced in the covered bond legislation of one Member State, whereas other provisions exist in the covered bond legislation of other Members States, which also enable to reduce the liquidity risk. Covered bonds qualifying for the regulatory treatment as Level 2A assets according to article 11 of delegated regulation (EU) 2015/61 with regard to the liquidity coverage requirement (LCR), and, in particular, compliant with the transparency requirements of article 129 (7) CRR, can rely on a number of characteristics which markedly limit the risk of mismatches between assets and liabilities and should be considered as interdependent for the purpose of the NSFR. This would also ensure a consistent treatment of covered bonds in the LCR and the NSFR.

Moreover, EAPB would suggest further amendments to article 428b (5) which otherwise would restrict the diversity of funding sources, including in different currencies, and increase risks. Article 428b (5) would particularly impose a problem for institutions funding assets in currencies with limited liquidity. This would be exacerbated for the case of a small funding market and poorly diversified funding sources. A closer alignment to BCBS provisions is suggested for this context since the Basel NSFR does not mention specific currency requirements which would put European banks in an unfavourable position. Finally, EAPB also believes that article 428b (5) leaves too much discretion to competent authorities. The competent authority should not be allowed to impose a separate restriction on currency mismatch for those currencies and harmonised technical standards for when this condition is fulfilled should be developed.

EAPB also represents the view that promotional banks should be excluded from the NSFR requirement. First of all, the costs and the administrative burden necessary to implement, calculate, report and monitor the NSFR are high and could tie up promotional banks' resources to fulfil their public policy mandate. This is especially due to the amount of data necessary to calculate the NSFR. Second, promotional banks' external funding can be mainly composed of long-term loans or long-term bonds which contributes to a low structural liquidity risk profile. Additionally, the risk arsing out of a potential liquidity transformation is covered by the respective public owners since they have the obligation to protect the economic basis of the undertaking or entity and maintain its viability throughout its lifetime, or directly or indirectly guarantee at least 90 % of the promotional banks' original capital or funding, or the promotional loan or guarantee they grant is or funded by the Member State's central or regional government or local authority. Third, due to these institutional frameworks bonds issued by promotional banks often constitute Level 1 assets under the LCR which allows them to refinance themselves even if the market for short-term funding dries up. Requiring promotional banks to comply with the NSFR requirement would therefore add little in terms of the stability of financial markets but instead lead to administrative costs without much corresponding added value.

EAPB welcomes that the Commission proposed to treat assets that have a residual maturity of less than six months and are provided by financial customers with an RSF factor of 5 % (article 428s (b)) or 10 % (article 428u (1) a) and b)). This improves banks' willingness to provide short term liquidity to other banks. Nevertheless, it would also be important to mirror this treatment on the liabilities side in order to uphold incentives for banks to take short term loans on the interbank market. Thus, EAPB proposes to make liabilities which are corresponding to the aforementioned assets subject to a symmetric ASF factor.

EAPB supports the view that the introduction of a new reporting requirement in article 415 (2) c) would burden institutions but not create any added value. For these reasons, article 415 (2) c) should be deleted.

Eventually, EAPB believes that the introduction of the NSFR requirement should be phased in over several years. Otherwise, the abrupt changes in a credit institution's funding structure could be disruptive and costly which does not seem advisable from a regulatory perspective. Since the introduction of the LCR has been phased in as well, EAPB is of the opinion that such a gradual introduction would be prudent and justified with regard to the NSFR, too.

CRR article	Proposed amendment 10
413 (1)	1. Institutions shall ensure that long term obligations are adequately met with a diversity of stable funding instruments under both normal and stressed conditions. **This paragraph shall not apply to public development credit institutions according to Article 429a(2).**
415 (2)	2. An institution shall report separately to the competent authorities of the home Member State, in the reporting currency, the items referred to in Titles II, III, IV and in Annex III as appropriate denominated in the currencies determined in accordance with the following: (a) where the institution has aggregate liabilities denominated in another currency than the reporting currency which amount to or exceed 5 % of the institution's or the single liquidity sub-group's total liabilities, excluding regulatory capital and off-balance sheet items; (b) where the institution has a significant branch as referred to in Article 51 of Directive 2013/36/EU in a host Member State using another currency than the reporting currency ; ~~(c) in the reporting currency, where the aggregate amount of liabilities in other currencies than the reporting currency amounts to or exceeds 5% of the institution's or the single liquidity subgroup's total liabilities, excluding regulatory capital and off-balance sheet items.~~
428b (5)	5~~. Institutions shall ensure that the currency denomination of their liabilities is consistent with the distribution by currency of their assets~~. Where appropriate, competent authorities may require institutions to restrict currency mismatch by setting limits on the proportion of required stable funding in a particular currency that can be met by available stable funding that is not denominated in that currency. That restriction may only be applied for a currency that is subject to separate reporting in accordance with Article 415(2). In determining the level of any restriction on currency mismatch that may be applied in accordance with this Article, competent authorities shall at least consider: (a) whether the institution has the ability to transfer available stable funding from one currency to another and across jurisdictions and legal entities within its group and to swap currencies and raise funds in foreign currency markets during the one-year horizon of the net stable funding ratio; (b) the impact of adverse exchange rate movements on existing mismatched positions and on the effectiveness of any foreign currency exchange hedges in place. ~~Any restriction on currency mismatch imposed in accordance with this Article shall constitute a specific liquidity requirement as referred to in Article 105 of Directive 2013/36/EU.~~

Avenue de la Joyeuse Entrée 1-5, B–1040 Brussels
phone: +32 / 2 / 286 90 71 • fax: +32 / 2 / 231 03 47 • e-mail: info@eapb.eu • website: www.eapb.eu

428f	1. Subject to prior approval of competent authorities, an institution may consider that an asset and a liability are interdependent, provided that all of the following conditions are fulfilled: (...) 2. Assets and liabilities directly linked to the following products or services shall be considered to meet the conditions of paragraph 1 and be considered as interdependent: (a) centralised regulated savings, where institutions are legally required to transfer regulated deposits to a centralised fund which is set up and controlled by the central government of a Member State and which provides loans to promote public interest objectives, provided that the transfer of deposits to the centralised fund occurs on at least a monthly basis; (b) promotional loans and credit and liquidity facilities ~~that fulfil the criteria set out in Article 31(9) of Delegated Regulation (EU) 2015/61 for institutions acting as simple intermediaries that do not support any funding risk;~~ (c) covered bonds as referred to in Article 52(4) of Directive 2009/65/EC that meet the eligibility requirements for the treatment set out in Article 129(4) or (5) **and (7),** ~~as appropriate, where the underlying loans are fully matched funded with the covered bonds issued or where there exists non-discretionary extendable maturity triggers on the covered bonds of one year or more until the term of the underlying loans in the event of refinancing failure at the maturity date of the covered bond;~~
428k	2. The following liabilities shall be subject to a 0% available stable funding factor: (a) trade date payables arising from purchases of financial instruments, foreign currencies and commodities that are expected to settle within the standard settlement cycle or period that is customary for the relevant exchange or type of transactions or that have failed to, but are still expected to, settle; (b) liabilities that are categorised as interdependent with assets in accordance with Article 428f; (c) liabilities with a residual maturity of less than six months provided by: (i) the ECB or the central bank of a Member State; (ii) the central bank of a third country; ~~(iii) financial customers;~~
428ka	**Liabilities with a residual maturity of less than six months provided by financial customers which are corresponding to assets according to Art. 428s(b) or Art. 428u(1) (a) or (b) shall be subject to a symmetric available stable funding factor.**
460 (3)	**3. The stable funding requirement referred to in Article 413(1) shall be introduced in accordance with the following phasing-in:** **(a) 60 % of the stable funding requirement in the first year of application;** **(b) 80 % as of the second year of application;** **(c) 100 % as of the third year of application.**

Avenue de la Joyeuse Entrée 1-5, B–1040 Brussels
phone: +32 / 2 / 286 90 71 • fax: +32 / 2 / 231 03 47 • e-mail: info@eapb.eu • website: www.eapb.eu

Leverage Ratio (LR):

With regard to the leverage ratio framework as proposed in the CRR, promotional banks (referred to as 'public development credit institution' in the legal proposals) would be heavily affected by the introduction of a binding LR if it does not properly take into account the low risk inherent to promotional banks and loans. This is linked to the fact that the intended use of the LR as a back stop for risk-weighted capital requirements is based on the assumption of consistency between the LR and the risk-weighted capital requirements. This consistency is however not prevailing for the case of a promotional bank business model. Assuming fully-loaded Basel III requirements with a LR at currently 3 %, a capital conservation buffer of 2.5 %, and a minimal risk-based Tier 1 capital ratio of 6 %, the LR will become a binding constraint for most promotional banks holding very low risk-weighted assets. Consequently, the LR would act as front stop and thus contradict its original intention by penalising the business model of promotional banks. Such an unintended consequence would reduce the ability of the promotional bank to fulfil its public policy mandate and would be contradictory to the European Commission's goal of reviving growth with the "Investment Plan for Europe" and would result in inefficient regulation.

Therefore, the possibility to deduct certain exposures from the LR exposure measure as suggested in CRR article 429a (1d) and the description of "public development credit institution" in article 429a (2) should offer a wording and interpretation which would allow a deduction of promotional exposures in their entirety respecting the specificities of promotional loans and promotional bank business models. The current definition as laid down in article 429a (2) may not apply to any promotional bank on the market to whom this definition is aimed for and should be adjusted to better reflect all existing promotional entities. Therefore, article 429a (2a) 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 429a (2b) 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 associations). 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 thus continue to be at the discretion of the member states and their central or regional government or local authority and EAPB would assume that it was not the intention of the proposals to restrict these frameworks. In addition, for consistency purposes with respect to delegated act (EU) 2015/63, and for further clarification, an additional amendment referring to promotional entities is required. In Article 429a (2) CRR the definition should be supplemented by 'or an entity of a credit institution'.

It is also crucial to make further adjustments in article 429a (2) b) and (2) d) as to better align existing definitions in various EU legislation (corresponding to regulation (EU) 2015/1017 and to delegated regulation (EU) 2015/63 and 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 429a (2) 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, regional or local government. Such an 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 429a (2e) 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 EU institutions 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.

CRR article	Proposed amendment 11
Recital 10	(10) A 3% leverage ratio requirement would however constrain certain business models and lines of business more than others. In particular, public lending by public development banks and officially guaranteed export credits would be impacted disproportionally. In the case of public development banks there are several reasons linked to their institutional frameworks, which justify a differentiated treatment. Public development banks are undertakings or entities set up by a Member State's central, regional or local government. They do not face market pressure to reach a certain level of profitability and they operate in very specific business areas. Further, they have direct or indirect, explicit or implicit guarantees from their public owners to accomplish these goals, which makes them to a much lesser extent exposed to the risk of excessive leverage. The leverage ratio should therefore be adjusted for these types of exposures. (10) A 3% leverage ratio requirement would however constrain certain business models and lines of business more than others. In particular, public lending by public development banks and officially guaranteed export credits would be impacted disproportionally. **In the case of public development banks there are several reasons linked to their institutional frameworks, which justify a differentiated treatment. Public development banks are undertakings or entities set up by a Member State's central or regional government or local authority. They do not face market pressure to reach a certain level of profitability and they operate in very specific business areas. Further, they have direct or indirect, explicit or implicit guarantees from their public owners to accomplish these goals, which makes them to a much lesser extent exposed to the risk of excessive leverage**. The leverage ratio should therefore be adjusted for these types of exposures.
429a (1d)	where the institution is a public development credit institution, the exposures arising from assets that constitute claims on **central governments,** regional governments, local authorities, or public sector entities in relation to public sector investments
429a (2)	For the purposes of point (d) of paragraph 1, public development credit institution means a credit institution **or an entity of a credit institution** that meets all of the following conditions: (a) it has been established ~~under public law~~ by a Member State's central government, regional government or local authority; (b) its activity is limited to advancing specified objectives of financial, social or economic public policy in accordance with the laws ~~and~~ **or equivalent** provisions **such as the articles of association** governing that institution, on a non-competitive basis. For these purposes, public policy objectives may include the provision of financing for promotional or development purposes to specified economic sectors or geographical areas of the relevant Member State; (c) its goal is not to maximise profit or market share; (d) ~~subject to state aid rules,~~ the central government, regional government or local authority has an obligation to protect the credit institution's viability or directly or indirectly

Avenue de la Joyeuse Entrée 1-5, B–1040 Brussels
phone: +32 / 2 / 286 90 71 • fax: +32 / 2 / 231 03 47 • e-mail: info@eapb.eu • website: www.eapb.eu

	guarantees at least 90% of the credit 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 or in the national law of Member States implementing that Directive.~~

General Regulatory Reporting and Disclosure Requirements:

The EAPB welcomes the more proportionate approach taken to reporting and disclosure requirements as laid down in the CRR proposals in articles 430a and 433a, 433b and 433c. The differentiation in the substance and frequency of disclosures however only occurs by size criteria and not by complexity or level of risk. This leaves the majority of public and promotional banks worse off. It only reflects a size criterion but does not capture their balance sheet structures which display an exceptionally low risk and lean business model which should also be taken into account for proportionality considerations. 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.

CRR article	Proposed amendment 12
99 (4)	4. The reports required in accordance with paragraphs 1 to 3 shall be submitted on an annual basis by small **and medium-sized** institutions as defined in Article 430a and, subject to paragraph 6, semi-annually or more frequently by all other institutions.
430a	Definitions For the purposes of this Part and Articles 13, 99, 100, 394 and 430 the following definitions shall apply: (1) "large institution" means an institution that meets any of the following conditions: (a) the institution has been identified as a global Systemically important institution ('G-SII') in accordance with Article 131(1) and (2) of Directive 2013/36/EU ; (b) the institution has been identified as other systemically important institution ('O-SII') in accordance with Article 131(1) and (3) of Directive 2013/36/EU; (c) the institution is, in the Member State where it is established, one of the three largest institutions by total value of assets; ~~(d) the total value of the institution's assets on the basis of its consolidation situation is equal to or larger than EUR 30 billion;~~ (e) the total value of the institution's assets is equal to or larger than EUR 5 billion and the ratio of its total assets relative to the GDP of the Member State where it is established is on average equal to or larger than 20 % over the four-year period immediately preceding the current annual disclosure period. (2) "large subsidiary" means a subsidiary that qualifies as a large institution as defined in paragraph 1. (3) "non-listed institution" means an institution that has not issued **equities or equity-like financial instruments** ~~securities~~ that are admitted to trading on a regulated market of any Member State, as defined in point (21) of article 4 (1) of Directive 2014/65/EU

Avenue de la Joyeuse Entrée 1-5, B–1040 Brussels
phone: +32 / 2 / 286 90 71 • fax: +32 / 2 / 231 03 47 • e-mail: info@eapb.eu • website: www.eapb.eu

	(4) "small **and medium-sized institution**" means an institution the value of the assets of which is on average equal to or less than EUR **25** ~~1.5~~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 annual disclosure period.
433b	Disclosures by small **and medium-sized** institutions 1. Small **and medium-sized** institutions shall disclose the information outlined below and, at least, with the following frequency: (a) on an annual basis: (i) the information referred to in points (a), (e) and (f) of Article 435(1); (ii) the information referred to in points (a), (b) and (c) of Article 435(2); (iii) the information referred to in Article 450; (iv) the information referred to in point (a) of Article437 (a), point (c) of Article 438, points (e) and (f) of Article 439, point (c) and points (1) and (3) of point (e) of Article 442, point (e) of Article 444, points (a) and (b) of Article 448, points (k) to (m) of Article 449, points (a) and (b) of Article 451, Article 451a(2) and (3), point (f) of Article 452, point (f) of Article 453 and point (a) of Article 455(2), where applicable. (b) the key metrics referred to in Article 447 on a semi-annual basis; 2. By way of derogation from paragraph 1, small **and medium-sized** institutions that are non-listed institutions shall disclose the following information at least on an annual basis: (a) the information referred to in points (a), (e) and (f) of Article 435(1); (b) the information referred to in points (a), (b) and (c) of Article 435(2); (c) the information referred to in Article 450; (d) the key metrics referred to in Article 447.

IFRS 9:

Article 473a establishes a phase-in of the new requirements for credit risk under IFRS 9 over a period of 5 years which is most likely expected to start on 1 January 2019. EAPB welcomes such an approach which allows mitigating the financial impact on institutions following the IFRS 9 endorsement. Nevertheless, the timeline for the phase-in remains uncertain given that the European Union has already adopted IFRS 9 on 29 November 2016 in Commission Regulation (EU) 2016/2067 with a first application date as of 1 January 2018. It is unclear whether the proposed transitional arrangements will come into force early enough. The transition periods are predicated on the “date of application of this article”. However, in section 5 of the explanatory memorandum (page 8), the Commission states that “the proposed amendments will start entering into force in 2019 at the earliest”. Furthermore, on page 22 of the detailed explanation, the Commission states that “Article 473a is added to phase in the new incremental provisioning requirements for credit risk under IFRS9 over a period starting from 1 January 2019 and ending on 31 December 2023”. The present proposals would entail full recognition of the impact in 2018, with a full reversal of the impact in 2019 and then a gradual phasing-in over a five-year period. Clearly, this implementation pattern does not appear reasonable and clarification as to the treatment during 2018 is required. Therefore, the phase-in arrangements should be adjusted in order to reflect the developments in the IFRS 9 endorsement process in the EU.

CRR article	Proposed amendment 13
473a	Until **2023** ~~[date of application of this Article + 5 years]~~ institutions that prepare their accounts in conformity with the international accounting standards adopted in accordance with the procedure laid down in Article 6(2) of Regulation (EC) No 1606/2002 may add to their Common Equity Tier 1 capital the amount calculated in accordance with paragraph 2 of this Article multiplied by the applicable factor laid down in paragraph 3.

Qualified Infrastructure Investments:

EAPB welcomes the Commission proposal to introduce lower own funds requirements for certain qualified infrastructure projects. From EAPB's point of view this treatment is prudentially justified as available data shows that average recovery rates of such projects are significantly higher than those of non-qualified projects. Further, EAPB believes that the proposed requirements for the preferential treatment are appropriate. Nevertheless, some of them should be clarified as their notion is not entirely clear. For instance, this applies to articles 501a (1) (e), (f) and (1) (g) (i), (ii), (v), and (vi).

It is a requirement under section 1 (e) of article 501a that cash flows are predictable and cover loan repayments. Specific criteria for whether 1(e) is fulfilled if infrastructure financing is provided for projects that do not generate cash flows from a large number of users, are given in section 2(b), limiting preferential treatment to specified types of obligors. For example, a municipally owned company responsible for infrastructure investments or a private entity under a PPP arrangement (private public partnership) will however not necessarily have an ECAI-rating, and will therefore not qualify, even if a central government, regional government or local authority has guaranteed the loan repayment explicitly. EAPB would propose that any loan benefitting from such a guarantee should automatically qualify for preferential treatment, regardless of whether the obligor is one of the specified types. This would further advance the objective of channelling more cheap long term financing to infrastructure investments.

CRR article	Proposed amendment 14
501a	(…) 2. For the purposes of paragraph 1(e), the cash flows generated shall not be considered predictable unless a substantial part of the revenues satisfies the following conditions: (a) one of the following criteria is met: (i) the revenues are availability-based; (ii) the revenues are subject to a rate-of-return regulation; (iii) the revenues are subject to a take-or-pay contract; (iv) the level of output or the usage and the price shall independently meet one of the following criteria: – it is regulated, – it is contractually fixed, – it is sufficiently predictable as a result of low demand risk **(v) the exposure benefits from a guarantee from a central government, regional government or local authority**