The Greens | European Free Alliance
in the European Parliament

GREEN AMENDMENTS TO THE REVIEW OF EUROPEAN BANKING REGULATION:

ENHANCE PROPORTIONALITY TO PRESERVE DIVERSITY IN THE BANKING MARKET

In order to maintain diversity and a true level playing field, the principle of proportionality needs to be respected more consistently in EU banking regulation and its application. Although small institutions might not per se be less risky, they tend to have less complex business models and operate on a regional basis. They are easier to monitor and do not pose systemic risks.

The Commission's objective of strengthening the principle of proportionality and reducing unnecessary compliance costs is much appreciated. However, in our view the November 2016 proposal falls short of achieving sufficient progress in proportionality and cost reduction.

This paper outlines the Green amendments on proportionality and contains two sections: **A) Criteria for small and non-complex institutions**; and **B) Areas for amendments**.

A) ROBUST CRITERIA FOR SMALL AND NON-COMPLEX INSTITUTIONS

This section outlines the criteria institutions shall fulfil in order to benefit from simplifications and exemptions.

COM proposal:

Article 430a CRR II regarding **disclosure** requirements: *"'small institution' means an institution the value of the assets of which is on average equal to or less than EUR 1.5 billion over the four-year period immediately preceding the current annual disclosure period."*

Other regulatory fields have different thresholds, for example derogation from **market risk** tied to small trading book (EUR 50 million), derogation from deferral and pay-out in instruments (**remuneration**) tied to assets equal or less than EUR 5 billion and variable staff remuneration that does not exceed EUR 50.000.

Greens approach: Enlarge the scope of the small banking box by increasing the threshold for total assets while requiring a higher capital and leverage ratio as well as a non-complex business model:

Follow the proposal of the EBA suggesting EUR 5 billion of total assets throughout the European Union to ensure a level playing field among all Member States. To avoid any reduction in hard prudential requirements, add higher capital and leverage ratio requirements complemented by qualitative criteria in line with a non-complex business model.

Replace Article 430a (4) CRR 2 by the following:

"'small and non-complex institution' means an institution which fulfils all of the following criteria:

(a) the value of the assets of which is on average equal to or less than EUR 5 billion over the four-year period immediately preceding the current fiscal year.

(b) the resolution assessment in accordance with Articles 15 and 16 of Directive 2014/59/EU concludes that the liquidation of the institution in normal insolvency proceedings is feasible and credible;

(c) the institution is not a large institution or large subsidiary as defined in paragraph (1) or (2);

(d) its trading activities are classified as small within the meaning of Article 94;

(e) the total value of its derivative positions is less than or equal to 2% of its total on- and off-balance sheet assets, where only derivatives which qualify as positions held with trading intent are included in calculating the derivative positions;

(f) the institution does not use internal models for calculating own funds requirements;

(g) the institution's total CET 1 ratio exceeds 15% and the institution's leverage ratio exceeds 6%."

B) AREAS FOR AMENDMENTS

Based on the small and non-complex banking box defined in chapter A) above, this section outlines the areas for amendments.

SIMPLIFY REGULATORY REPORTING (CRR)

COM proposal:

Article 99 (7) CRR is amended to include a mandate to **EBA to deliver a report** to the Commission on the **cost of regulatory reporting** by 31 December 2019, to quantify reporting costs and to make recommendations on ways to simplify reporting for small institutions. Article 99 (7) CRR II: "*EBA shall assess the financial impact on institutions of Commission Implementing Regulation (EU) No 680/201429 in terms of compliance costs and report its findings to the Commission by no later than [31 December 2019]. That report shall in particular examine whether reporting requirements have been applied in a sufficiently proportionate manner.*"

Small institutions (as defined in new Article 430a) will be required to submit **regulatory capital reports less frequently** than it is the case now. Reporting on large exposures will be simplified by removing the reporting item on the expected run-off of the exposure and by better specifying, through secondary legislation, reporting obligations concerning shadow banking entities. Article 99 (4) CRR II: "*The reports required in accordance with paragraphs 1 to 3 shall be submitted on an annual basis by small institutions as defined in Article 430a and, subject to paragraph 6, semi-annually or more frequently by all other institutions.*"

Competent authorities are allowed to **waive reporting requirements** if data items are already available by other means. Article 99 (11) CRR II: „*Competent authorities may waive the requirements to report data items specified in the implementing technical standards referred to in this Article and Articles 100, 101, 394, 415 and 430 where those data items are already available to the competent authorities by means other than those specified under the above mentioned implementing technical standards, including where that information is available to the competent authorities in different formats or levels of granularity.*"

Greens additions: Streamline regulatory reporting by a common EU reporting framework and reduce reporting frequency for selected reporting requirements:

Add to Article 99 (4a) CRR II to reduce reporting frequency for Asset Encumbrance, Large Exposures and Leverage Ratio: "***4a. Small institutions as defined in Article 430a shall submit the reports required in Articles 100, 101, 394 and 430 on an annual basis***."

Replace paragraph 7(a) of Article 99 CRR II by the following: ***"7a. The EBA shall be mandated to develop by 31 December 2019 regulatory technical standards to implement a common EU reporting framework to streamline EU and national reporting requirements including supervisory reporting, the reporting for resolution, deposit guarantee and monetary policy purposes, as well as any statistical data requests to ensure that requirements apply at the same point in time. Newly introduced reporting requirements shall be applied not earlier than 2 years after their publication. Final reporting templates need to be made available at least 1 year prior to their application date.***

The EBA shall, together with the ECB, the SRB, national competent and resolution authorities as well as statistical authorities, draw up a calendar on planned additional reporting requirements and update it on a yearly basis."

Changes to Article 99 (11) CRR II: „*Competent authorities**, statistical authorities, the ECB as well as the ESAs** ~~may~~ **shall** waive the requirements to report data items specified in the implementing technical standards referred to in this Article and Articles 100, 101, 394, 415 and 430 where those data items are **outdated or** already available to the competent authorities by means other than those specified under the above mentioned implementing technical standards, including where that information is available to the competent authorities in different formats or levels of granularity. **Competent, resolution, designated and relevant authorities shall make use of data exchange wherever possible**.*"

Changes to Article 100 (1) CRR II: *"Institutions shall report to their competent authorities on their level of asset encumbrance **only if more than 15% of their assets are encumbered.**"*

REDUCE ADMINISTRATIVE BURDEN OF DISCLOSURE REPORTS (CRR)

COM proposal:

New provisions are added in Part Eight to provide for a **more proportionate disclosure regime** that takes into account the relative size and complexity of institutions. These are classified into **three categories** as either significant (Article 433a), small (Article 433b) and other (Article 433c), with a further distinction between listed and non-listed institutions. Disclosure requirements will apply to each category of institutions on a sliding scale basis, with a **differentiation in the substance and frequency of disclosures**.

At the upper end of the sliding scale, large institutions with listed securities will be required to provide annual disclosures of all the information required under Part Eight, plus disclosures of selected information on a semi-annual and quarterly basis, including in the latter case a key prudential metrics table (Article 447). On the lower end, **small non-listed institutions** will only be required to make **selected disclosures** of **governance, remuneration** and **risk management information** and the **key metrics** table on an **annual basis.**

Greens additions: Waive disclosure requirements for small non-listed banks and reduce disclosure requirements to selected key metrics for medium non-listed banks:

Waiver for disclosure requirements for small non-listed institutions.

Changes to Article 433b CRR II: *"2. By way of derogation from paragraph 1,* ***competent authorities may waive for*** *small institutions that are non-listed institutions* ***the requirement*** *~~shall disclose the following information at least on an annual basis:…~~* ***to issue any disclosure reports.****"*

Selected annual disclosures for medium (i.e. non-small and non-large) non-listed institutions as foreseen in the Commission proposal for small non-listed institutions in Article 433b.

Changes to Article 433c CRR II: "*2. By way of derogation from paragraph 1, other institutions that are non-listed institutions shall disclose the information outlined below and~~, at least,~~ with the following frequency:*

(a) the information referred to in points (a), (e) and (f) of Article 435(1) on an annual basis;

(b) the information referred to in points (a), (b) and (c) of Article 435(2) every two years;

(c) the information referred to in Article 450 on an annual basis;

(d) the key metrics referred to in Article 447 on an annual basis.

ALLOW SIMPLIFIED METHODS FOR THE CALCULATION OF MARKET RISK (CRR)

COM proposal:

Banks with **small trading books** (under EUR 50 million and less than 5% of the institution's total assets) can still benefit from a **derogation**, which allows them to **apply the treatment of banking book positions to their trading book** (Article 94 CRR II).

Banks with **medium-sized activities** subject to the market risk capital requirements (under EUR 300 million and less than 10% of the institution's total assets) may use the **simplified standardised approach**, which corresponds to the existing standardised approach (Article 325a CRR II).

Greens additions: Consider risk reducing hedging transactions in the calculation of market risk:

Clarify that hedging-derivatives for **real-world** commodity and foreign-exchange risks are not penalized in the calculation of the **small trading** book in Article 94 CRR II. **Extend** the **exemption** for small trading books in Article 94 CRR II **to** the requirements for the **management of the trading book** (Article 102-104 CRR).

Article 94 CRR 2: Derogation for small trading book business:

"1. By way of derogation from point (b) of Article 92(3), institutions may calculate the own funds requirement of their trading-book business in accordance with paragraph 2 provided that the size of

the institutions' on- and off-balance sheet trading-book business is equal to or less than the following thresholds on the basis of an assessment carried out on a monthly basis:

(a) 5 % of the institution's total assets;

(b) EUR 50 million.

3. Institutions shall calculate the size of their on- and off-balance sheet trading book business on a given date for the purposes of paragraph 1 in accordance with the following requirements:

(a) all the positions assigned to the trading book in accordance with Article 104 shall be included in the calculation except for the following:

(i) positions concerning foreign-exchange and commodities ***derivatives that are recognised as internal hedges against non-trading book foreign-exchange and commodities risk exposures****;*

(ii) credit derivatives that are recognised as internal hedges against non-trading book credit risk exposures or counterparty risk exposures;

3a. (new) Where the conditions set out in paragraph 1 are met, competent authorities may waive the requirements for the management of the trading book in Articles 102, 103 and 104. Appropriate risk management practices as stipulated in Articles 74 and 83 of Directive 2013/36/EU shall remain unaffected."

Clarify that hedging-derivatives for real-world commodity and foreign-exchange risks up to EUR 200 million are not penalized when qualifying for the **simplified standardised approach**.

Article 325a CRR II: Conditions for using the Simplified Standardised Approach:

"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 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.

2. Institutions shall calculate the size of their on- and off-balance sheet subject to market risks on a given date in accordance with the following requirements:

(a) all the positions assigned to the trading book shall be included, except credit derivatives that are recognised as internal hedges against non-trading book credit risk exposures ***and except commodities derivatives that are recognised as internal hedges against non-trading book commodities risk exposures up to EUR 200 million****;*

(b) all non-trading book positions generating foreign-exchange and commodity risks ***exceeding EUR 200 million*** *shall be included;"*

MAKE REMUNERATION REQUIREMENTS WORKABLE FOR SMALL BANKS (CRD)

COM proposal:

As required under Article 161(2) of the CRD, the Commission has reviewed the efficiency, implementation and enforcement of the CRD remuneration rules. The findings of this review, reflected in the Commission Report COM(2016) 510, were overall positive.

The review however showed that some of the rules, namely the rules on **deferral** and **pay-out in instruments**, are **not workable** for the smallest and least complex institutions and for staff with low variable remuneration. The review also showed that **proportionality** with regard to the smallest and least complex institutions as reflected in Article 92(2) of the CRD has been **interpreted in different ways**, leading to an uneven implementation of the rules in the Member States. A targeted amendment is therefore proposed to cater for the problems encountered in the application of the rules on deferral and pay-out in instruments in small and non-complex institutions and towards staff members with low variable remuneration. To this end, Article 94 is amended to clarify that the rules apply to all institutions and their identified staff, except for those that are below the **thresholds set for derogations**. At the same time, some flexibility is offered to competent authorities to adopt a stricter approach.

The amendments concerning provisions on remuneration also aim to address another need for more proportional rules identified by the Commission's review by allowing listed institutions to use share-linked instruments for meeting the CRD requirements.

Article 94 (3) CRD V:

"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 5 billion over the four-year period immediately preceding the current financial year;

(b) a staff member whose annual variable remuneration does not exceed EUR 50.000 and does not represent more than one fourth of the staff member's annual total remuneration."

Greens additions: Allow derogation also for medium sized banks and exempt small banks from the requirement to identify material risk takers:

Increase the **threshold for the exemption** to all institutions that are not "large" as defined in Article 430a CRR II.

Article 94 (3) CRD V:

"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 ***or subsidiary that is not large as defined in Article 430a (1) and (2) of Regulation (EU) No 575/2013 unless the competent authority objects to the exemption*** *~~the value of the assets of which is on average equal to or less than EUR 5 billion over the four-year period immediately preceding the current financial year~~;*

(b) a staff member whose annual variable remuneration does not exceed EUR 50.000 and does not represent more than one fourth of the staff member's annual total remuneration;

In addition, institutions fulfilling the criteria in Article 94 (3) CRD V and applying the bonus cap to their entire staff could be **exempted** from the requirement to **identify material risk takers**.

Changes to Article 94 (2) CRD V:

"2. EBA shall develop draft regulatory technical standards with respect to specifying the classes of instruments that satisfy the conditions set out in point (l) (ii) of paragraph 1 and with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on the institution's risk profile as referred to in Article 92(2).

EBA shall submit those draft regulatory technical standards to the Commission by 31 March 2014.

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

The obligation to identify staff whose professional activities have a material impact on the institution's risk profile as referred to in the first subparagraph shall not apply to institutions benefitting from the derogation in Article 94 (3) and applying the bonus cap as referred to in Article 94 g (i) to their entire staff."

PROPORTIONATE APPLICATION OF THE NET STABLE FUNDING RATIO - NSFR (CRR)

COM proposal:

The Basel Committee has developed its NSFR proposal for large, systemically important banks with cross border activities and significant activities in capital and whole sale funding markets. While the Commission proposal aims at taking into account a number of EU specificities in the implementation, there are **almost no elements of proportionality** (except in Art. 428x (4) for small derivative books).

Greens additions: Allow small banks to use a simplified but conservatively calibrated NSFR:

Small institutions as defined in Article 430a CRR 2 should be allowed to alternatively calculate a **simplified NSFR** (sNSFR) based on the same calculation method as the Basel NSFR recommendation but taking into account **only a reduced number of data fields instead of over 100**. The reporting of encumbered assets is simplified drastically. However, the minimum NSFR ratio shall be kept at 100%.

Due to the simplifications, some ASF (Available Stable Funding) and RSF (Required Stable Funding) factors would need to be re-determined based on the NSFR Commission proposal. Where positions with different factors are combined, generally the more conservative factor should be chosen.

Re-table AMs 113-128 of the EP Rapporteur introducing a simplified NSRF for small and non-complex institutions.

PROPORTIONATE APPLICATION OF THE LIQUIDITY COVERAGE RATIO - LCR (CRR)

COM proposal:

No proportionality measures foreseen.

Greens additions: Exempt small banks from daily monitoring of the LCR and phase-out additional national liquidity requirements:

Maintaining a monthly reporting frequency for the short-term oriented LCR with a time horizon of 30 days seems appropriate also for small institutions. However, in order to lower the administrative burden, the **requirement to daily monitor** the LCR should **not be applied to small institutions showing a LCR above 150%**.

Addition to Article 414: Compliance with liquidity requirements:

"Where an institution does not meet, or expects not to meet the requirement set out in Article 412 or the general obligation set out in Article 413(1), including during times of stress, it shall immediately notify the competent authorities and shall submit without undue delay to the competent authorities a plan for the timely restoration of compliance with Article 412 or Article 413(1). Until compliance has been restored, the institution shall report the items referred to in Title II or Title III, as appropriate, daily by the end of each business day unless the competent authority authorises a lower reporting frequency and a longer reporting delay. Competent authorities shall only grant such authorisations based on the individual situation of an institution and taking into account the scale and complexity of the institution's activities. They shall monitor the implementation of the restoration plan and shall require a more speedy restoration if appropriate. ***Small and non-complex institutions within the meaning of Article 430a which have complied with at least 150 % of the liquidity coverage requirement within the meaning of Article 412 for the last six reporting dates shall be permitted, as from the subsequent reporting date, to carry out the continuous monitoring of their liquidity coverage requirement only on the reporting date in accordance with the technical implementation standards of Article 415. This provision applies as long as the liquidity coverage requirement of the institution does not fall below 150 % on two additional successive reporting dates. "***

Additionally, **national liquidity reporting requirements** need to be **phased out**.

Changes to Article 412 (5) CRR: "*5.* ***As from [two years after the entry into force of the CRR Amending Regulation]*** *Member States* ~~*may maintain or introduce*~~ ***shall phase out*** *national provisions in the area of liquidity requirements* ~~*before binding minimum standards for liquidity coverage requirements are specified and fully introduced in the Union in accordance with Article 460. Member States or competent authorities may require domestically authorised institutions, or a subset of those institutions, to maintain a higher liquidity coverage requirement up to 100 % until the binding minimum standard is fully introduced at a rate of 100 % in accordance with Article 460*~~*."*

Changes to Article 413 (4): *"3.* ***As from [two years after the entry into force of the CRR Amending Regulation]*** *Member States* ~~*may maintain or introduce*~~ ***shall phase out*** *national provisions in the area of stable funding requirements* ~~*before binding minimum standards for net stable funding requirements are specified and introduced in the Union in accordance with Article 510*~~*."*

PROPORTIONATE APPLICATION OF ADDITIONAL LIQUIDITY MONITORING METRICS - ALMM (CRR)

COM proposal:

Article 415 (3) CRR II **doesn’t contain any proportionality** measures:

“3. EBA shall develop draft implementing technical standards to specify the following:

(a) …;

(b) additional liquidity monitoring metrics that are required to allow competent authorities to obtain a comprehensive view of the liquidity risk profile and which shall be proportionate to the nature, scale and complexity of an institution's activities.

EBA shall submit to the Commission those draft implementing technical standards for the items specified in point (a) by [one year after the entry into force of the amending Regulation] and for the items specified in point (b) by 1 January 2014.

Until the full introduction of binding liquidity requirements, competent authorities may continue to collect information through monitoring tools for the purpose of monitoring compliance with existing national liquidity standards.

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

Greens additions: Exempt small banks without concentration of refinancing risks from the ALMM requirement and phase-out additional national requirements:

As ALMM is meant to avoid concentration of refinancing risks, **institutions** showing **deposits** with a **high degree of granularity** should be **exempt** from this requirement. Besides, as CRR II introduces binding liquidity requirements (LCR and NSFR), competent authorities should be **prevented** from **collecting additional information** through **national** liquidity standards.

Changes to Article 415 (3) CRR:

“3. EBA shall develop draft implementing technical standards to specify the following:

(a) …;

(b) additional liquidity monitoring metrics that are required to allow competent authorities to obtain a comprehensive view of the liquidity risk profile and which shall be proportionate to the nature, scale and complexity of an institution's activities.

EBA shall submit to the Commission those draft implementing technical standards for the items specified in point (a) by [one year after the entry into force of the amending Regulation] and for the items specified in point (b) by 1 January 2014.

As from [two years after the entry into force of the CRR Amending Regulation] *~~Until the full introduction of binding liquidity requirements~~, competent authorities ~~may continue~~* ***shall cease*** *to collect information through monitoring tools for the purpose of monitoring compliance with existing national liquidity standards.*

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

The Commission Implementing Regulation (EU) 2016/313 of 1 March 2016 with regard to additional monitoring metrics for liquidity reporting shall not apply to small institutions as defined in Article 430a CRR II if their refinancing is based on deposits with a high degree of granularity and if their assets are sufficiently diversified.

The EBA shall issue regulatory technical standards to define "deposits with a high degree of granularity" and "sufficiently diversified assets" as condition for the exemption of small institutions from additional monitoring metrics for liquidity reporting."

PROPORTIONATE APPLICATION OF NEW PROVISIONS FOR THE CALCULATION OF INTEREST RATE RISK (CRR/CRD)

COM proposal:

Following developments at the BCBS level on the measurement of interest rate risks, Articles 84 and 98 of the CRD and Article 448 of the CRR are amended in order to introduce a revised framework for capturing interest rate risks for banking book positions. The amendments include the introduction of a common standardised approach that institutions might use to capture these risks or that competent authorities may require the institution to use when the systems developed by the institution to capture these risks are not satisfactory, improved outlier test and disclosure requirements. In addition, EBA is mandated, in Article 84 of the CRD, to elaborate the details of the standardised methodology, the criteria and conditions that institutions should follow to identify, evaluate, manage and mitigate interest rate risks and, in Article 98 of the CRD, to define the six supervisory shock scenarios applied to interest rates and the common assumption that institutions have to implement for the outlier test.

No proportionality measures foreseen.

Greens additions: Require small institutions to use new and complex calculation methods only if the competent authority detects deficiencies in the banks' risk assessment:

While capturing interest rate risk is of utmost importance, small institutions should be required to **introduce** the **new** and **complex calculation** methods only if required by the competent authority. Additionally, the EBA RTS developing the **newly introduced common standardised** approach should take into account proportionate measures for **small institutions**.

Changes to Article 84 (1) CRD V:

"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.

By way of derogation, small institutions as defined in Article 430a CRR II shall be required to use the standardised methodology only if the competent authority comes to the conclusion that the internal systems are not sufficient."

(…)

*4. EBA shall develop draft regulatory technical standards to specify, for the purposes of this Article, the details of a standardised methodology that institutions may use for the purpose of evaluating the risks referred to in paragraph 1****, including a conservatively calibrated alternative simplified methodology for small institutions as defined in Article 430a CRR 2****.*

EBA shall submit those draft regulatory technical standards to the Commission by [one year after entry into force].

Changes to Article 98 (5) CRD V:

"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. Supervisory measures shall be required at least in the case of institutions whose economic value of equity referred to in Article 84(1) declines by more than 15 % 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.

By way of derogation, for small institutions as defined in Article 430a CRR II, the requirements laid down in the first subparagraph shall apply only if the competent authority provides a reasoned opinion that the internal systems are not sufficient."

Delete the newly introduced EBA regulatory technical standards defining procedures for the calculation of interest risk in the banking book as this would also restrict the supervisor's discretion to assess risks.

Deletion of Article 98 (5a) CRD V:

~~*"5a. EBA shall develop draft regulatory technical standards to specify for the purpose of paragraph 5:*~~

~~*(a) six supervisory shock scenarios to be applied to interest rates for every currency;*~~

~~*(b) common modelling and parametric assumptions that institutions shall reflect in their calculation of the economic value of equity under paragraph 5;*~~

~~*(c) whether supervisory measures shall also be required in the case of a decline in the institutions' net interest income referred to in Article 84(1) as a result of potential changes in interest rates.*~~

~~*EBA shall submit those draft regulatory technical standards to the Commission by [one year after entry into force]."*~~

ENHANCE PROPORTIONALITY IN THE SUPERVISORY REVIEW AND EVALUATION PROCESS - SREP (CRD)

COM proposal:

No proportionality measures foreseen. **In contrast, COM proposes a deletion** of Article 103 CRD IV.

~~*"Article 103 CRD IV: Application of supervisory measures to institutions with similar risk profiles*~~

~~*1. Where the competent authorities determine under Article 97 that institutions with similar risk profiles such as similar business models or geographical location of exposures, are or might be exposed to similar risks or pose similar risks to the financial system, they may apply the supervisory review and evaluation process referred to in Article 97 to those institutions in a similar or identical manner. For those purposes, Member States shall ensure that competent authorities have the necessary legal powers to impose requirements under this Directive and under Regulation (EU) No 575/2013 on those institutions in a similar or identical manner, including in particular the exercise of supervisory powers under Articles 104, 105 and 106.*~~

~~*The types of institution referred to in the first subparagraph may in particular be determined in accordance with the criteria referred to in Article 98(1)(j).*~~

~~*2. The competent authorities shall notify EBA where they apply paragraph 1. EBA shall monitor supervisory practices and issue guidelines to specify how similar risks should be assessed and how consistent application of paragraph 1 across the Union can be ensured. Those guidelines shall be adopted in accordance with Article 16 of Regulation (EU) No 1093/2010."*~~

Greens additions: Reduce the frequency for the supervisory review and evaluation process for small banks and allow competent authorities to exempt small banks entirely from this requirement:

Besides proportionality already enshrined in Art. 97 (4) CRD IV, the **SREP** (Art. 97, 98 CRD IV) should **only** be **obligatory for medium and large institutions**. For smaller, non-complex institutions, the **national competent authority** should have the **discretion** to decide, on the basis of a one-time supervisory assessment with respect to the relevant institution, whether the performance of the SREP is necessary from a prudential perspective. **This derogation would be subject to a review every three years.**

On top, we suggest to **reject** the **deletion of Article 103 CRD** as this Article allows competent authorities to treat banks with similar business models in the same way. Thus Article 103 CRD prevents administrative burden and strengthens the proportionality principle in the SREP.

Changes to Article 97 (4) CRD:

"4. Competent authorities shall establish the frequency and intensity of the review and evaluation referred to in paragraph 1 having regard to the size, systemic importance, nature, scale and complexity of the activities of the institution concerned and taking into account the principle of proportionality. The review and evaluation shall be updated at least on an annual basis for institutions covered by the supervisory examination programme referred to in Article 99(2). ***The review and evaluation shall be updated not more than every three years for small and non-complex institutions as defined in Article 430a.***"

Introduce a new Article 97a CRD:

Article 97a (new) CRD: Derogation for small institutions

“In derogation to Article 97, competent authorities may decide on the basis of a supervisory assessment with respect to the relevant institution to not apply Articles 97 and 98 if the institution is small and non-complex as defined in Article 430a. The supervisory assessment shall be reviewed every three years and when the competent authority identifies the emergence of new risks.”

Re-introduce Article 103 CRD IV:

Article 103

Application of supervisory measures to institutions with similar risk profiles

“1. Where the competent authorities determine under Article 97 that institutions with similar risk profiles such as similar business models or geographical location of exposures, are or might be exposed to similar risks or pose similar risks to the financial system, they may apply the supervisory review and evaluation process referred to in Article 97 to those institutions in a similar or identical manner. For those purposes, Member States shall ensure that competent authorities have the necessary legal powers to impose requirements under this Directive and under Regulation (EU) No 575/2013 on those institutions in a similar or identical manner, including in particular the exercise of supervisory powers under Articles 104, 105 and 106.

The types of institution referred to in the first subparagraph may in particular be determined in accordance with the criteria referred to in Article 98(1)(j).

2. The competent authorities shall notify EBA where they apply paragraph 1. EBA shall monitor supervisory practices and issue guidelines to specify how similar risks should be assessed and how consistent application of paragraph 1 across the Union can be ensured. Those guidelines shall be adopted in accordance with Article 16 of Regulation (EU) No 1093/2010.”

ENHANCE PROPORTIONALITY IN THE RECOVERY PLANNING FRAMEWORK (BRRD)

COM proposal:

The Commission proposal waives the recapitalization amount in the MREL requirement for institutions which are deemed ex ante by resolution authorities as being subject to insolvency rather than resolution. Article 45c (2) BRRD 2 reads: "(...) Where the resolution plan provides that the entity shall be wound up under normal insolvency proceedings, the requirement referred to in Article 45(1) for that entity shall not exceed an amount sufficient to absorb losses in accordance with point (a) of the first subparagraph."

Greens additions: Allow authorities to exempt small banks which will not be resolved but liquidated from the requirement to draw up recovery plans and to report selected data:

Where the resolution authority deems it feasible and credible to liquidate the institution under normal insolvency proceedings or other equivalent national procedures according to a resolvability assessment in Art. 15 (1) BRRD, the following should apply:

a) The national competent authority should be able to **waive** the current **requirement** for institutions to draw up **recovery plans** (Article 5 (1) BRRD) and the national resolution authorities to draw up **resolution plans** (Article 10 (1) BRRD).

b) Institutions shall **not be subject to the MREL reporting requirement according to Article 45i (new) BRRD** if they fulfil a leverage ratio of 10%.

Changes to Article 4 BRRD to waive the requirement to draw up a recovery plan:

"1a (new). Where simplified obligations according to this Article are applied, the competent authority may waive the requirements referred to in Article 5 (1) or where the resolution authority deems it feasible and credible to liquidate the institution under normal insolvency proceedings or other equivalent national procedures the resolution authority may waive the requirements referred to in Article 10 (1). The right of the competent authority and of the resolution authority to gather relevant information shall remain unaffected."

Add new paragraph 2a in Article 45i BRRD to waive the MREL reporting requirement:

"2a. When an institution meets a leverage of at least 3.3 time the requirement in accordance with Article 92 (1) (d) of Regulation (EU) No 575/2013 it shall be exempted from the requirements of this Article."

MAKE GOVERNANCE ARRANGEMENTS MORE WORKABLE FOR SMALL BANKS WITH REGARD TO ESTABLISHMENT OF COMMITTEES AND INDEPENDENCE OF BOARD MEMBERS

COM proposal:

No proportionality measures foreseen.

Greens additions: Waive the requirement to establish separate risk, audit and remuneration committees and allow small banks to continue having non-bankers in their management body:

It is unquestioned that members of the management body of institutions must at all times comply with the requirements regarding their suitability (Art. 91 CRD IV). However, a legislative amendment could explicitly clarify that **competent authorities maintain their discretion to assess the suitability** of members of the management body (and its suitability as a collective body) on an ex ante- or ex post-basis, i.e. before or after an appointment of a member, **at least with regard to members of the supervisory board of an institution**. Although such discretion is already foreseen in the current CRD-framework, recent ESA Guidelines might overshoot the level 1 text in some aspects. Therefore, a **clarification in the level 1 text seems warranted**. Such a legal clarification could ensure that competent authorities remain able to allocate their resources in a flexible and cost-effective way and to take into account particularities stemming from national company and labour law.

New Article 91 (14) CRD:

"14 (new). Notwithstanding Article 13 (1) of this Directive, competent authorities may assess, at their discretion, institutions' compliance with the requirements according to Article 91 (1) to (8) of this Directive regarding the management body in its supervisory function before or after the appointment of one of its members."

In addition, the requirement to establish separate risk, audit and remuneration committees within an institution should be waived for small and non-complex institutions in order to ensure a level playing field throughout the EU:

Changes to Article 88 (2) CRD: Nomination committee

"***For small institutions as defined in Article 430a CRR 2 and w****here, under national law, the management body does not have any competence in the process of selection and appointment of any of its members, this paragraph shall not apply."*

Changes to Article 76 (3) CRD: Risk committee

"3. (…)

Competent authorities may allow an institution which is not considered significant as referred to in the first subparagraph to combine the risk committee with the audit committee as referred to in Article 41 of Directive 2006/43/EC. Members of the combined committee shall have the knowledge, skills and expertise required for the risk committee and for the audit committee.

<u>For small institutions as defined in Article 430a CRR 2 this paragraph shall not apply</u>.”

Changes to Article 95 (1) CRD: Remuneration committee

“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.

<u>Competent authorities may decide not to apply this Article to small and non-complex institutions as defined in Article 430a of Regulation (EU) No 575/2013.</u>”

Regarding the overburdening of smaller banks with the Fit & Proper guidelines established by ECB/EBA for directors, a derogation for small and non-complex institutions should also apply to Article 23 (1) b. and 91 CRD IV.

Changes to Article 91 (1) CRD:

“1. Members of the management body shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties. The overall composition of the management body shall reflect an adequately broad range of experiences. Members of the management body shall, in particular, fulfil the requirements set out in paragraphs 2 to 8. ***<u>Competent authorities may waive the requirements set out in paragraphs 3 to 5 for small and non-complex institutions as defined in Article 430a CRR 2.</u>”***

Finally, requiring independence of supervisory board members as foreseen in Article 91 (8) CRD may not lead to ban members of affiliated companies from the supervisory board.

Changes to Article 91 (8) CRD:

“8. Each member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making. ***<u>This requirement shall not lead to ban members of affiliated companies from the supervisory board.</u>***”

ADDITIONAL GREENS AMENDMENTS TO SPECIFIC PROVISIONS NOT TOUCHED UPON BY THE COMMISSION PROPOSAL

FINREP: Introduce a derogation for small banks to report financial information only on an annual basis in line with their obligation to publish annual accounts

Changes to Article 99 (9) CRR: Reporting on own funds requirements and financial information

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

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

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

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

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

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

Competent authorities shall require small and non-complex institutions as defined in Article 430a to report financial information required by paragraph 2 not more than annually.*"*

Accounting: Enshrine neutrality of prudential regulation towards accounting to avoid forcing small institutions to apply international financial reporting standards instead of national GAAP

Changes to Recital (67) of CRR 2:

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