



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND
CAPITAL MARKETS UNION

The Director-General

Brussels,
FISMA.D.1/ER/xx(2022)NNNNNN

Mr José Manuel Campa
Chairman – European Banking
Authority
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92400 Courbevoie
FRANCE

**Subject: Regulatory technical standards on own funds and eligible liabilities
under Regulation (EU) No 575/2013**

Dear José Manuel,

On 8 April 2022, the European Banking Authority (EBA) published and sent to the Commission an opinion on the amendments proposed by the Commission to the final draft Regulatory Technical Standards (RTS) on own funds and eligible liabilities under Regulation (EU) No 575/2013 (CRR)¹.

In that opinion, the EBA agreed on most of the amendments suggested by the Commission but expressed its disagreement with two changes that the EBA considered substantive. As detailed in our previous exchanges², the amendments in question concern the notion of indirect funding in the context of the eligibility criteria for own funds and eligible liabilities (Article 9(2) of the draft RTS as amended by the Commission) and to the prior permission regime to redeem early eligible liabilities issued by entities whose minimum requirement for own funds and eligible liabilities has been set at a level equal to their loss absorption amount (Article 32h of the draft RTS as amended by the Commission).

I would like to inform you that after carefully considering the arguments put forward in the EBA opinion, the Commission, acting in accordance with the procedure set out in Article 10(1), fourth and fifth subparagraphs, of Regulation (EU) No 1093/2010, will

¹ [EBA issues an opinion on the European Commission's proposed amendments to the EBA final draft technical standards for own funds and eligible liabilities | European Banking Authority \(europa.eu\)](#)

² See letter dated 24 February 2022, published on the EBA website.

launch the endorsement procedure for the draft RTS with the mentioned amendments. Please, refer to the annex attached.

The Commission valued the exchanges with the EBA on these important standards. However, I would like to underline that the Commission does not agree with one line of reasoning included in the EBA's opinion that supports a narrow reading of the Commission's authority to amend draft technical standards. The EBA's opinion referred to case-law stating that '*le contenu du projet de normes techniques, [...], n'est, en principe, pas susceptible de modification*'.³ It is our view that such sentence is taken out of context, as the Court meant to ensure the participation of stakeholders in the standards' public consultation phase and not to limit the power of the Commission under Article 10 of the Regulation (EU) No 1093/2010.

Yours sincerely,

(e-signed)

John BERRIGAN)

Enclosure: Draft regulatory technical standards on own funds and eligible liabilities under Regulation (EU) No 575/2013

³ T-23/12, MAF v. EIOPA, ECLI:EU:T:2013:632