11 July 2016

EBA Standardised templates for Additional Tier 1 instruments - DRAFT

Reasons for publication

1. Pursuant to Article 80 of Regulation (EU) No 575/2013 (Capital Requirements Regulation – CRR) on the continuing review of quality of own funds, 'EBA shall monitor the quality of own funds instruments issued by institutions across the Union'.

2. Furthermore, pursuant to the same Article, 'competent authorities shall, without delay, upon request by EBA, forward all information that EBA deems relevant concerning new capital instruments issued in order to enable EBA to monitor the quality of own funds instruments issued by institutions across the Union.

3. On 29 May 2015, the EBA published its updated Report on the monitoring of Additional Tier 1 (AT1) instruments of EU institutions. When publishing its report, the EBA announced that it would develop standardised terms and conditions for AT1 issuances which would cover the prudential parts of the terms and conditions.

4. This publication puts forward some EBA proposals with regard to these draft standardised terms and conditions. Furthermore, the EBA is publishing in parallel to these draft templates a draft second update of its AT1 monitoring report last published on 29 May 2015 (please refer to the separate document '*EBA draft report on the monitoring of AT1 instruments of EU institutions – second update*').

Content

Objectives

5. There are several reasons which led the EBA to the development of standardised terms and conditions for AT1 instruments.

    a. Increased standardisation through templates could be favourably received by the investor community; it could be helpful for small institutions; it could be perceived as a mitigation of the complexity of the AT1 instruments; templates would be designed to cover the most common loss absorption mechanisms they would help the EBA in its monitoring role of AT1 issuances; it will assist the supervisors in their assessment of the compliance of issuances, and would help preventing a potential deterioration in the quality of AT1 instruments;

    b. There are already some jurisdictions which are *de facto* using standard templates as the fiscal authority made coupon deductibility conditional on the use of such templates;

    c. It can be observed that some issuances are using similar terms and conditions and that some sort of standardisation is already taking place for some clauses;

d. The EBA has already designed in the past (2011) a common template in the context of the recapitalisation exercise (the Buffer Convertible Capital Securities - BCCS common term sheet[1]) which has been used by a few European institutions;

6. These standardised templates would be proposed to institutions (and competent authorities where the case may be) on an opt-in basis in case they are willing to use them. The use of these templates would bring a certain level of security to the issuing banks as the templates are perceived to reflect the expectations of the supervisory community on the practical implementation of the provisions of the CRR, RTS and Q&As, based on the experience gained with issuances already made. The proposed templates could be helpful, in particular, to institutions of a smaller size and could also facilitate comparison of terms and conditions of instruments by supervisors when assessing the compliance with the regulatory provisions.

7. The proposed standardised templates are not legally binding. Their use by institutions is optional and the absence of use of the templates does not render the concerned issuances (existing and future) non-compliant with regulatory requirements. EBA intends to update these draft templates through time, where there might be a need to implement regulatory developments and take into consideration developments in market practice. Issuers may continue to use their own terms and conditions, as locally applicable, provided those conditions are compliant with regulatory requirements and taking into account the regular EBA guidance given in particular via the AT1 monitoring report and the Q&As. Where this is the case, the templates may facilitate the interaction between issuers and competent authorities in assessing the compliance of terms and conditions with applicable regulatory requirements, helping detect and analyse clauses which contradict or materially deviate from those requirements.

8. It is important to underline that the objective of the templates is only to cover the prudential provisions of the issuances (the generally so-called 'Terms and conditions' or 'Principal terms of the notes/securities' or 'General description of the notes' and corresponding definitions. Other aspects of the issuances (like 'Risk factors', 'Use of Proceeds', 'Taxation' etc) are not meant to be covered by the standard templates. These templates have been built based on the observations of issuances existing in the market.

Structure of the templates

9. The EBA has considered as a starting point the Buffer for Convertible Capital Securities term sheet, completed and amended as far as necessary on the basis of the final CRR text, the Regulatory Technical Standard (RTS), the AT1 monitoring report and the ongoing monitoring of issuances.

10. The templates are organised as follows:

[1] http://www.eba.europa.eu/risk-analysis-and-data/eu-capital-exercise/2011

a. Essential provisions which are deemed to be necessary or recommended on the basis of the regulatory requirements and the ongoing monitoring of issuances. These essential provisions contain some provisions which are common for conversion and write-down, as well as separate provisions designed only for conversion or only for (temporary and permanent) write-down ;

b. Optional provisions which are considered acceptable but not necessary and which would need to be formulated in a specific way if included.

11. The proposed templates are annexed to this publication.

12. Essential provisions cover provisions relating to flexibility of payments, permanence, loss absorbency, and in particular the following aspects:

a. For clauses common to conversion and write-down: definitions and main terms of the notes, status of the notes, cancellation of distributions, redemption, trigger event;

b. For clauses specific to conversion: definitions and consequences of a trigger event

c. For clauses specific to write-down: definitions, consequences of a trigger event, write-up

13. Optional provisions cover the following aspects: gross-up clauses, substitution/variation clauses, pre-emption rights.

14. The standard templates contain 3 different forms of loss absorption mechanisms: full conversion, partial temporary write-down and full permanent write-down. While other combinations (like permanent partial write-down) are possible, the EBA has based its work on the issuances most commonly observed in the markets for the time being.

15. The templates do not cover aspects related to BRRD/resolution issues, except for contractual bail-in language for instruments issued under third country law which is included on the basis of existing work from the EBA (regulatory technical standards on recognition of bail-in[2]).

Process followed

16. A targeted consultation with some industry participants (including some law firms) has been performed. The EBA is now publishing the draft standard templates in view of receiving comments during a public hearing to be organised in the EBA premises on 26 July 2016.

[2] http://www.eba.europa.eu/regulation-and-policy/recovery-and-resolution/regulatory-technical-standards-on-contractual-recognition-of-bail-in

17. In view of this hearing, and to serve as preparatory work for the publication of the final templates, comments for publication have been included throughout the templates in order to explain the rationale followed.

18. The objective would be to have the final standard templates ready for use by end 2016.

EBA's considerations

19. One challenge associated with the development of standard templates is to strike the right balance between simplicity and coverage of all the relevant prudential issues. The level of detail has to be sufficient to allow larger banks to use the templates or some part of it, like specific clauses, while being kept simple for smaller banks.

20. It is probably difficult to foresee all possible cases and, based on some specific structures of some institutions or groups, it may happen that the templates may miss a specific feature or that the templates may contain a provision which is not perfectly fitted for these specific structures and which has to be adapted.

21. In addition, it is understood that the templates will have to fit into the applicable contract, company and insolvency law of the chosen jurisdiction for the issuance.

22. It cannot be expected that the issuance follows the exact wording of the templates, it is nevertheless expected that issuers make use of the templates and liaise with their competent authorities in respect of the adaptations necessary to comply with applicable laws in a specific jurisdiction, making sure that the issuers do not to deviate from the intent of the clauses as provided in the relevant legislation and reflected in the standardised templates.

23. The EBA is continuing its monitoring of AT1 issuances and will strive to regularly update its AT1 report with new findings and recommendations. It will, in the same vein, strive to regularly update the templates for AT1 issuances, to ensure that they are usable and adapted to the latest developments in the markets and regulatory developments internationally.

Contents

General Caveat

The proposed standardised templates are not legally binding. Their use by institutions is optional and the absence of use of the templates does not render the concerned issuances (existing and future) non-compliant with regulatory requirements. Issuers may continue to use their own terms and conditions, as locally applicable, provided those conditions are compliant with regulatory requirements and taking into account the regular EBA guidance given in particular via the AT1 monitoring report and the Q&As.

1. Essential provisions

1.1 Clauses common to standard templates on conversion and write-down

TOPIC	CLAUSES	*Comments for publication:*
A. Definitions and main terms of the Notes		*In developing the content of the definitions, the EBA sought to follow closely the terms already provided in Regulation (EU) No 575/2013 (Capital Requirements Regulation – CRR), the RTS on Own Funds as well as EBA guidance provided in the AT1 monitoring report and Q&As.* *Definitions for some items like 'Issue Date', 'Issue Price', 'Distribution Rate', 'Distribution Payment Date', 'Call dates' are not provided, as these are specific to the institution using the templates.* *It is not intended to restrict the AT1 instruments to the type/form of issuances referred to herein. The templates have been construed upon most observed issuances By European*

		banks and may be subject, where relevant, to updates taking into account regulatory developments or market practices.
	Issuer: means [name of the institution]	*Provisions of the proposed templates are meant to be used/adapted for all levels of application (individual, sub-consolidated, consolidated, where applicable). The reference to the 'Issuer' in the templates does not imply that it refers only to an individual level of application, it refers to all level(s) of application which might be relevant to the Issuer, it may be on an individual basis only, or a sub-consolidated basis, on a consolidated basis only, or combination of different levels of application. As indicated in the AT1 report published on 29 May 2015[3], there should be a trigger on the basis of all levels of solvency applicable to the issuer.*
	Notes: [amount and currency] [Additional Tier 1] Notes	*The term 'Notes' can be replaced by another term as deemed relevant (e.g. 'AT1 instrument').*
	Issue Date:	
	Issue Price:	
	Maturity Date: The Notes will have no scheduled maturity date	
	First Call Date: The Distributions Payment Date falling on xxx	*While the use of the term 'Interest' is more common in existing issuances, the CRR defines "distributions" as the payment of dividends or interest in any form (Article 4 (1) (110), which is deemed to cater for different types of*

[3] http://www.eba.europa.eu/-/eba-updates-its-monitoring-of-additional-tier-1-capital-instruments

		accounting classification, being equity or debt.
	Distributions Rate: xx	*According to Article 52(1)(g) of the CRR, as specified by Article 20 of Delegated Regulation (EU) No 241/2014 (Regulatory Technical Standards on own funds), there shall be no incentive to redeem, especially where reset mechanisms are used. In particular, the issuance shall not contain a step up.* For write-down mechanisms, the distributions on the Notes will accrue on the basis of the Current Principal Amount (i.e. the nominal amount of the Notes as reduced by write-downs and subsequently increased by write-ups to an amount still lower than the Original Principal Amount, so that distributions are based on the reduced amount of the principal).
	Distributions Payment Date(s):	
	"**Common Equity Tier 1 Capital (CET1 Capital)**" has the meaning given to it in Article 50 of the CRR complemented by the transitional provisions of Part Ten of the CRR as implemented in [the relevant jurisdiction].	*The definition of Common Equity Tier 1 Capital might depend partially on the implementation of the transitional provisions in particular (by competent authorities or by member states).*
	"**Common Equity Tier 1 Capital Ratio (CET1 Ratio)**" means, with respect to the Issuer, at any time, the Common Equity Tier 1 capital as of such time expressed as a percentage of the total risk exposure amount of the Issuer.	
	"Common Equity Tier 1 instruments (CET1 instruments)": has the meaning	*These definitions refer to 'Capital Regulations' definition and*

	given to it in the Capital Regulations	*would hence evolve if the legislation changes.*
	"Additional Tier 1 instruments (AT1 instruments)": has the meaning given to it in the Capital Regulations	
	"Tier 2 instruments (T2 instruments)": has the meaning given to it in the Capital Regulations	
	A "**Capital Event**" is deemed to have occurred if there is a change in the regulatory classification of the Notes under the Capital Regulations that was not reasonably foreseeable at the time of the Notes issuance and that would be likely to result in their exclusion in full or in part from the Issuer's own funds (other than as a consequence of write-down or conversion, where applicable) or reclassification as a lower quality form of the Issuer's own funds and that the Competent Authority considers to be sufficiently certain.	*Own funds refer to the definition in Article 72 of the CRR.*
	"**Capital Regulations**" means any requirements of [name jurisdiction] law or contained in the relevant rules of European Union law, then in effect at the Issue Date in [name jurisdiction] relating to capital adequacy and applicable to the Issuer, including but not limited to the CRR, national laws and regulations implementing the CRD IV Directive and the BRRD, delegated or implementing acts adopted by the European Commission and guidelines issued by the European Banking Authority, as amended from time to time, or such other acts as may come into effect in place thereof.	*The reference to the BRRD is with regard to Article 55 thereof related to statutory bail-in powers for third country law issuances. The reference to 'as amended from time to time' is a future proof reference to cater for future evolutions in the legislation and it applies to all relevant provisions in the templates.*
	"Competent Authority" means the [insert relevant NCA(s)] or such other or successor authority which is responsible for prudential supervision and/ or empowered by national law to supervise the Issuer as part of the supervisory system in operation in [the relevant jurisdiction]	*This is the CRR definition. The insertion of the name of the relevant authority will clarify more specifically the authority which is in charge.*

	"**CRD IV Directive**" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directive 2006/48/EC and 2006/49/EC, amended from time to time, or such other directive as may come into effect in place thereof	
	"CRR" means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on the prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, amended from time to time, or such other regulation as may come into effect in place thereof.	
	"CDR" means Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing the CRR with regard to regulatory technical standards for Own Funds requirements for institutions (Capital Delegated Regulation), as amended from time to time.	
	"**Administrative Action**" means any judicial decision, official administrative pronouncement, regulatory procedure affecting taxation.	
	"Distributable Items" means the amount of the profits at the end of the latest financial year plus any profits brought forward and reserves available for that purpose before distributions to holders of own funds instruments (excluding, for the avoidance of doubt, any Tier 2 instruments) less any losses brought forward, profits which are non-distributable pursuant to provisions in [country] legislation or the Issuer's [by-laws/articles of association/statutes, as applicable] and sums placed to non-distributable reserves in accordance with applicable [country] law or the Issuer's [by-laws/articles of association/statutes, as applicable], those losses and reserves being determined on the basis of the individual accounts of the Issuer and not on the	*This definition refers to the CRR definition. In addition, some issuances refer to distributions on Tier 2 instruments to be deducted from distributable items. This is considered as prudent in the sense that the amount of distributable items should not be inflated and this could usefully be added to the definition by issuers'.*

	basis of the (sub-) consolidated accounts.	
	"Maximum Distributable Amount" means any maximum distributable amount required to be calculated in accordance with [reference to relevant national legislation] transposing or implementing Article 141 of the CRD IV Directive.	
	"Relevant Distributions" means the sum of (i) any distributions on the Notes made or scheduled to be made by the Issuer in the then current financial year of the Issuer and (ii) any distributions made or scheduled to be made by the Issuer on other undsCET1 instruments or AT1 instruments in the then current financial year of the Issuer.	
	"**Tax Law Change**" means (i) any amendment to, or clarification of, or change in, the laws or treaties (or any regulations promulgated thereunder) of the [name jurisdiction] or any political subdivision or tax authority thereof or therein affecting taxation, (ii) any Administrative Action or (iii) any amendment to, clarification of, or change in the official position or the interpretation of such Administrative Action or any interpretation or pronouncement that provides for a position with respect to such Administrative Action that differs from the theretofore generally accepted position, in each case, by any legislative body, court, governmental authority or regulatory body, irrespective of the manner in which such amendment, clarification or change is made known, which amendment, clarification or change is effective, or which pronouncement or decision is announced, on or after the Issue Date, and in any such case, where this changes the applicable tax treatment of the Notes.	*This is a text which is quite standard in existing issuances. It may nevertheless need to be adapted to cater for applicable tax rules in a given jurisdiction.* *Paragraph 32-33 of the EBA AT1 Report states that 'An example of change in regulatory assessment would be the following: in application of the answer to Q&A 2013/29, the competent authority used to consider that there would not be a tax effect in case of a write down, as the institution would probably be facing losses even after taking into account the positive effect of the write down on retained earnings. Subsequently, based on the specific assessment of the situation of the institution, the competent authority considers that there would be a tax effect and therefore disqualifies part of the instrument. Potential changes in the regulatory assessment cannot be considered as valid triggers for regulatory or tax calls.'*

	For the avoidance of doubt, changes in the assessment of the Competent Authority regarding tax effects are not considered as a Tax Law Change.	
B. Status of the notes	The issuer expects the Notes to be an Additional Tier 1 Instruments of the Issuer. The Notes constitute direct, unsecured and subordinated obligations of the Issuer, and shall at all times rank: (i) *pari passu* without any preference among themselves; (ii) *pari passu* with (a) the existing Additional Tier 1 instruments of the Issuer, and (b) any other obligations or capital instruments of the Issuer that rank or are expressed to rank equally with the Notes on a liquidation or bankruptcy of the Issuer and the right to receive repayment of capital on a liquidation or bankruptcy of the Issuer; (iii) senior to holders of the Issuer's Common Equity Tier 1 instruments and any other obligations or capital instruments of the Issuer that rank or are expressed to rank junior to the Notes on a liquidation or bankruptcy of the Issuer and the right to receive repayment of capital on a liquidation or bankruptcy of the Issuer; and (iv) junior to present or future claims of (a) unsubordinated creditors of the Issuer and (b) subordinated creditors of the Issuer including Tier 2 holders other than the present or future claims of creditors that rank or are expressed to rank *pari passu* with or junior to the Notes.	*References to liquidation or bankruptcy may be replaced by equivalent terms depending on insolvency laws applicable at national level.* *The status of the Notes may also need to be adapted to reflect local law specificities as per Article 52 (1) CRR. However, CRR capital hierarchy needs to be followed.*
C.	**Discretionary cancellation of Distributions on the Notes**	*See provisions of Article 52(1)(l)(iii) CRR relating to the full*

Cancellation of Distributions	The Issuer may, at its discretion, at any time elect to cancel, in whole or in part, any distributions on the Notes, which is scheduled to be paid on a Distributions Payment Date for an unlimited period and on a non-cumulative basis. Upon the Issuer electing to cancel (in whole or in part) any distributions payment on the Notes, the Issuer shall give notice of such election to the Holders without undue delay and in any event no later than on the Distributions Payment Date. Any failure to give such notice shall not affect the validity of the cancellation and shall not constitute a default for any purpose. Such notice shall specify the amount of the relevant cancellation and, accordingly, the amount (if any) of the relevant distributions payment on the Notes that will be paid on the relevant Distributions Payment Date.	*discretion for the Issuer to cancel at all times distributions and Article 53 CRR relating to restrictions on the cancellation of distributions and features that could hinder recapitalisation.*
	Mandatory cancellation of Distributions on the Notes Without prejudice to i) such full discretion of the Issuer under the Discretionary cancellation of Distributions on the Notes and ii) the prohibition to make payments on the AT1 instruments pursuant to national legislation implementing Article 141 (2) of the CRD IV Directive, before MDA is calculated, any payment of distributions on the Notes scheduled to be paid on any Distributions Payment Date shall be cancelled, in whole or in part, if and to the extent that: i) the amount of such distributions payment on the Notes otherwise due, together with any further Relevant Distributions, any obligation referred to national legislation implementing Article 141 (2) (b) of the CRD IV Directive, and the amount of any write-ups, where applicable, in aggregate exceed the amount of Maximum Distributable Amount (if any); or ii) the payment of such distributions on the Notes would cause, when aggregated together with other Relevant Distributions and any potential write-ups the Distributable Items of the Issuer as at such Distributions Payment Date then applicable to the Issuer to be	*See provisions of Article 52(1)(l) CRR relating to conditions for distributions, Article 141 CRDIV relating to capital conservation measures and restrictions on distributions. See also provisions of the draft updated AT1 report published concomitantly to these templates.*

	exceeded; or iii) the Competent Authority orders the Issuer to cancel the relevant distributions payment on the Notes (in whole or in part) scheduled to be paid.	
	Distributions on the Notes non-cumulative Any distributions on the Notes so cancelled, shall be cancelled definitively and shall not accumulate or be payable at any time thereafter. Any accrued but unpaid distributions on the Notes up to (and including) a Trigger Event (whether or not such distributions have become due for payment) shall be automatically cancelled. For the avoidance of doubt, any accrued but unpaid distributions from the Trigger Event up to the [Conversion/Write Down] Date shall also be automatically cancelled even if no notice has been given to that effect.	*See provisions of Article 52(1)(l)(iii) CRR on the non-cumulative features of distributions.*
	No default Any distributions payment on the Notes (or part thereof) so cancelled shall not constitute a default by the Issuer for any purpose, and the holders shall have no right thereto whether in a bankruptcy or liquidation of the Issuer or otherwise. Any such cancellation of distributions imposes no restrictions on the Issuer. In the absence of any notice of cancellation referred to above being given, the fact of non-payment (in whole or in part) of the relevant distributions payment on the Notes on the relevant Distributions Payment Date shall be evidence of the Issuer having elected or being required to cancel such distributions payment in whole or in part, as applicable.	*See provisions of Article 52(1)(l)(iv) and (v) CRR where the cancellation of distributions does not constitute an event of default and imposes no restriction on the institution.*

D. Redemption	**(a) Perpetual Notes** The Notes are securities which are not redeemable at the option of the holders and have no fixed redemption date, and the Issuer shall have the right to call, redeem, repay or repurchase them only in accordance with and subject to the conditions set out in Articles 77 and 78 of the CRR being met and not before five years from issuance except where the conditions set out in Article 78(4) of the CRR are met or, in the case of repurchases for market making purposes, where the conditions set out in Article 29 of the CDR are met and in particular with respect to the predetermined amount defined by the Competent Authority as per Article 29(3)(b) of the CDR (see conditions for Redemption, Issuer's Call Option, Redemption Due to Taxation and Redemption for Regulatory Purposes). The instrument shall become immediately due and payable only in the event of liquidation or bankruptcy of the Issuer, subject to the conditions in the Status of the Notes.	*See provisions of Article 52(1)(g), (h) and (i) CRR stating that instruments are perpetual and stating conditions for calls, redemptions, repurchases.*
	(b) Conditions for call, redemption, repayment or repurchase Any call, redemption, repayment or repurchase of the Notes in accordance with the conditions related to the Issuer's Call Option, Redemption Due to Taxation or Redemption for Regulatory Purposes is subject to both of the following: (i) the Issuer obtaining the prior permission of the Competent Authority in accordance with Article 78 of the CRR where either: 1. the Issuer has replaced the Notes with own funds instruments of equal or higher quality at terms that are sustainable for the income capacity of the Issuer earlier than or at the same time as the call,	*See provisions of Article 52(1)(i) CRR in conjunction with Articles 77 CRR and 78 CRR relating to conditions/supervisory permission for reducing own funds and Article 27 et seq Delegated Regulation (EU) No 241/2014 (Regulatory Technical Standards on own funds) and EBA AT1 Report paragraphs 26-31, 34, 59 and 62.*

	redemption, repayment or repurchase; or 2. the Issuer has demonstrated to the satisfaction of the Competent Authority that the own funds of the Issuer would, following such call, redemption, repayment or repurchase, exceed the requirements laid down in Article 92(1) of the CRR and the combined buffer requirement as defined in [national legislation] transposing point (6) of Article 128 of the CRD IV Directive by a margin that the Competent Authority considers necessary on the basis of [national legislation] transposing Article 104(3) of the CRD IV Directive; (ii) in addition to (i), in respect of a redemption prior to the fifth anniversary of the Issue Date, if and to the extent required under Article 78(4) of the CRR 1. in the case of redemption upon the occurrence of a Tax Law Change, the Issuer has demonstrated to the satisfaction of the Competent Authority that the change in the applicable tax treatment of the Notes is material and was not reasonably foreseeable as at the Issue Date, or 2. in the case of redemption upon the occurrence of a Capital Event, the Issuer has demonstrated to the satisfaction of the Competent Authority that the change in the regulatory classification of the Notes was not reasonably foreseeable as at the Issue Date. For the avoidance of doubt, any refusal of the Competent Authority to grant a permission in accordance with Article 78 of the CRR shall not constitute a default for any purpose. The Issuer shall not give a notice of redemption if a Trigger Event has occurred.	

	If the Issuer has given a notice of redemption and, after giving such notice but prior to the relevant redemption date, a Trigger Event has occurred, the relevant redemption notice shall be automatically revoked and be null and void and the corresponding redemption shall not be made.	
	(c) Issuer's Call Option Subject to the condition for call, redemption, repayment or repurchase, the Issuer may elect, in its sole discretion, to redeem all, but not some only, of the Notes on the First Call Date or on [to be defined] thereafter at their Redemption Price.	*Dates following the first call date can be each distributions payment date on the notes or any other date to be defined.* *The clause has been designed on the basis of a call in full. The EBA is not aware that partial calls are frequent in the case of AT1 issuances.*
	(d) Redemption Due to Taxation In case of a Tax Law Change the Issuer may, subject to the conditions for call, redemption, repayment or repurchase at any time redeem, [some / all], of the Notes at their Redemption Price on the relevant date fixed for redemption.	*See provisions of Article 52(1)(i) CRR in conjunction with Article 78(4) CRR and Article 27 et seq Delegated Regulation (EU) No 241/2014 (Regulatory Technical Standards on own funds) and EBA AT1 Report paragraphs 30-33,* *In line with paragraph 30 of the EBA AT1 Report, partial calls could be acceptable if the effect is material.*
	(e) Redemption for Regulatory Purposes In case of a Capital Event the Issuer may, subject to the Conditions for call, redemption, repayment or repurchase, at any time redeem all, but not some only, of the Notes at their Redemption Price on the relevant date fixed for redemption.	*See provisions of Article 52(1)(i) CRR in conjunction with Article 78(4) CRR and Article 27 et seq Delegated Regulation (EU) No 241/2014 (Regulatory Technical Standards on own funds) and EBA AT1 Report paragraphs 26-28. .* *In line with paragraphs 26 to 28 of the EBA final AT1 report, only regulatory calls for the full amount of instruments are acceptable, regardless of whether regulatory changes trigger a full or partial derecognition from AT1 capital.*
E. Bail-in	**Contractual recognition of statutory bail-in powers for issuances governed by third country laws**	*Directive 2014/59/EU (the BRRD) requires Member States to confer on their resolution authorities a number of powers*

	By its acquisition of the Notes, each holder of the Notes also acknowledges and agrees to be bound by the exercise of, any Bail-in Power (as defined herein) by the Relevant Resolution Authority (as defined herein) that may result in the write-down or cancellation of all, or a portion, of the principal amount of, or distributions on, the Notes and/or the conversion of all, or a portion, of the principal amount of, or distributions on, the Notes into shares or other Notes or other obligations of the Issuer or another person, including by means of a variation to the terms of the Notes to give effect to the exercise by the Relevant Resolution Authority of such Bail-in Power. Each holder of the Notes further acknowledges and agrees that the rights of the holders of the Notes are subject to, and will be varied, if necessary, so as to give effect to, the exercise of any Bail-in Power by the Relevant Resolution Authority. For the avoidance of doubt, the potential write-down or cancellation of all or a portion of the principal amount of, or distributions on, the Notes or the conversion of the Notes into shares, other Notes or other obligations in connection with the exercise of any Bail-in Power by the Relevant Resolution Authority is separate and distinct from a Conversion or Write-Down following a Trigger Event although these events may occur consecutively. For these purposes, a "Bail-in Power" means any statutory write-down and/or conversion power existing from time to time under any laws, regulations, rules or requirements relating to the resolution of credit institutions, investment	*including the powers to write-down and convert[4] relevant capital instruments[5] in accordance with Article 59 of the BRRD, including in the context of an application of the bail-in tool (Chapter IV (Resolution tools) of Title IV (Resolution) of the BRRD). The bail-in tool shall enable the resolution authority:* • *to recapitalise an institution[6] or relevant entity;[7]* • *to convert to equity or reduce the principal amount of claims or debt instruments that are transferred to a bridge institution or under the sale of business tool or the asset separation tool. (See Article 43 of the Directive.)* *Liabilities of an institution or relevant entity may be governed by the law of a Member State in which case the application of the write-down and conversion powers would be effective as a matter of law. However, some liabilities may be governed by the law of a third country. In the absence of a regime to secure the cross-border effectiveness of an application of the write-down and conversion powers by an EU resolution authority (whether under the local law of a third country or*

[4] The 'write-down and conversion powers' are defined in point (66) of Article 2(1) of the BRRD as the powers referred to in Article 59(2) and in points (e) to (i) of Article 63(1) of the BRRD.

[5] 'Relevant capital instruments' are defined in point (74) of Article 2(1) of the BRRD.

[6] 'Institution' means a credit institution or investment firm subject to the initial capital requirement laid down in Article 28(2) of Directive 2013/36/EU established in the EU (see points (2), (3) and (23) of Article 2(1) of the BRRD).

[7] 'Relevant entity' means an entity of a kind referred to in point (b), (c) or (d) of Article 1(1) of the BRRD (i.e. specified financial institutions and types of holding companies in the EU).

	firms and/or Group Entities (as defined herein) incorporated in the relevant Member State in effect and applicable in the relevant Member State to the Issuer or other Group Entities, including but not limited to any such laws, regulations, rules or requirements that are implemented, adopted or enacted within the context of any European Union directive or regulation of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms and/or within the context of a relevant Member State resolution regime or otherwise, pursuant to which liabilities of a credit institution, investment firm and/or any Group Entities can be reduced, cancelled and/or converted into shares or other Notes or obligations of the obligor or any other person. Upon the Issuer being informed or notified by the Relevant Resolution Authority of the actual exercise of the date from which the Bail-in Power is effective with respect to the Notes, the Issuer shall notify the holders without delay. Any delay or failure by the Issuer to give notice shall not affect the validity and enforceability of the Bail-in Power nor the effects on the Notes described in this clause. The exercise of the Bail-in Power by the Relevant Resolution Authority with respect to the Notes shall not constitute an event of default and the terms and conditions of the Notes shall continue to apply in relation to the residual principal amount of, or outstanding amount payable, in respect of the Notes,	*pursuant to an international agreement), it is possible that a third country court may not recognise the effect of the application of the powers by that resolution authority on such liabilities.* *For this reason Article 55(1) of the BRRD requires Member States to require institutions and relevant entities to include in relevant agreements [8] a contractual term by which the creditor or party to the agreement creating the liability recognises that liabilities may be subject to the write-down and conversion powers and agrees to be bound by any reduction of the principal or outstanding amount due, cancellation or conversion that is effected by the exercise of those powers by an EU resolution authority.* *The requirement to include the contractual term does not apply where the EU resolution authority determines that the liabilities or instruments can be subject to the write-down and conversion powers as a result of national law in the third country or a binding agreement with that third country.[9]* *The contractual term must include such components as are required under Article 55(3) of the BRRD (the delegated act adopted by the Commission further to the development of*

[8] A 'relevant agreement' means an agreement creating relevant liabilities (i.e. all liabilities other than those which are excluded liabilities under Article 44(2) of the BRRD or are deposits referred to in point (a) of Article 108 of the BRRD) which is: (a) governed by the law of a third country; and (b) issued or entered into after the date on which provisions to transpose Section 5 (The bail-in tool) of Chapter IV of Title IV of the BRRD are applied. (See the first subparagraph of Article 55(1) of the BRRD.)

[9] See the second subparagraph of Article 55(1) of the BRRD.

	subject to any modification of the amount of distributions payable to reflect the reduction of the principal amount, and any further modification of the terms that the Relevant Resolution Authority may decide in accordance with applicable laws and regulations relating to the resolution of credit institutions, investment firms and/or Group Entities incorporated in the relevant Member State. Each holder of the Notes also acknowledges and agrees that this provision is exhaustive on the matters described herein to the exclusion of any other agreements, arrangements or understandings relating to the application of any Bail-in Power to the Notes. 'Group Entities' means any legal person that is part of the Group. The 'Relevant Resolution Authority' means any authority with the ability to exercise the Bail-in Power in the relevant Member State.	*draft RTS by the EBA).* *The model clause set out above complies with the requirements of Article 3 of the EBA's final draft RTS under Article 55(3) of the BRRD regarding the mandatory contents of the contractual term,*[10] *and is also in line with the FSB's recently published 'Principles for Cross-border Effectiveness of Resolution'.*[11] *The model clause also includes other elements (concerning requirements for the Issuer to give notice and default event rights) which the EBA regards as desirable from the perspective of placing holders on notice of the effects of the application of the write-down and conversion powers.* *In preparing the model clause, the EBA has been mindful of the need to strike a balance between securing an appropriate level of convergence and ensuring that differences in legal systems and cultures of third countries as well as other differences arising from different forms of liability (in particular, debt instruments and capital instruments) can be taken into account by EU resolution authorities, institutions and relevant entities in formulating contractual terms that are effective in securing legal certainty as regards an*

[10] The EBA's final draft RTS is available here: http://www.eba.europa.eu/documents/10180/1132911/EBA-RTS-2015-06+RTS+on+Contractual+Recognition+of+Bail-in.pdf/c66aa9cb-e2ff-4896-85e6-dca7ba5cba65.

[11] The Principles are available here: http://www.financialstabilityboard.org/2015/11/principles-for-cross-border-effectiveness-of-resolution-actions/.

		application of the write-down and conversion powers. *The EBA will continue to monitor developments concerning the cross-border recognition of write-down and conversion powers, including developments at the EU and international level which may have an impact on the content of the model clause.*
F. Trigger Event	A Trigger Event means at any time that the CET1 Capital Ratio of the Issuer is below [X]%. Whether a Trigger Event has occurred at any time shall be determined by the Issuer, the Competent Authority [or any agent appointed for such purpose by the Competent Authority] and such calculation shall be binding on the holders on the Notes.	*See paragraphs 60-61 and 89-93 of the EBA AT1 Report on triggers for instruments issued within a banking group. Where needed, a reference to a group trigger may also be warranted for appropriate treatment at the consolidated level of the Group.* *See provisions of Article 54 CRR stating that triggers shall be at least 5.125% CET1.* *See in addition provisions of the draft updated AT1 Report published concomitantly with these templates.*

1.2 Clauses for standard templates on full conversion

TOPIC	CLAUSES	*Comments for publication:*
A. Definitions	**"Conversion"** means the conversion of the Notes into [CET1 instruments] and "convert" and "converted" shall be construed accordingly.	*The term 'CET1 instruments' is to be replaced as appropriate by the relevant denomination for the issuing institution (for example to refer to shares).*
	"Conversion Date" means the date on which the [CET1 instruments] are to be delivered, as specified as such in the Trigger Event Notice, being without delay but in any event not later than one month (or such shorter period as the Competent Authority may then require) from the occurrence of the relevant Trigger Event.	*The issuance may also specify to whom the instruments are to be delivered, as applicable (e.g. a trustee).*
	"Conversion Price": [To be determined on a case-by-case basis]	*See provisions of Article 54(1)(c) CRR. The conversion price will be determined on a case by case basis by the issuer, the minimum requirement being that the definition specifies either a rate of conversion with a limit on the permitted amount of conversion or a range within which the instrument will convert into CET1 instruments.* *It should be noted that the issuer may also include anti-dilution provisions.*
	"**Redemption Price**" means, in respect of each Note at any time, the principal amount thereof together with any accrued distributions on the Notes (if any).	

B. Consequences of a Trigger Event	If a Trigger Event occurs at any time, all of the following shall apply: 1. The Issuer shall immediately inform the Competent Authority of the occurrence of the Trigger Event; 2. The Issuer shall notify, in an irrevocable manner, the holders of the Notes that the Trigger Event has occurred ("**Trigger Event Notice"**); 3. The Issuer shall without delay irrevocably and mandatorily convert the Notes into CET1 instruments in whole on the Conversion Date, at which point all of the Issuer's obligations under the converted Notes shall be irrevocably discharged and satisfied by the Issuer's issuance and delivery of the [relevant CET1 instruments] on the Conversion Date. The Issuer undertakes to ensure that its authorised share capital is at all times sufficient for converting the Notes into [CET1 instruments] if a trigger event occurs. All necessary authorisations are to be obtained at the date of issuance of the Notes. The Issuer undertakes to maintain at all times the necessary prior authorization to issue the [CET1 instruments] into which the Notes would convert upon occurrence of a Trigger Event. If, for any reason, it is not possible to convert the instrument into CET1 instruments at the time of the Trigger Event, the Notes shall not be subject to Conversion but instead shall be permanently written-down. Accordingly, upon the occurrence of a Trigger Event, any amount of the Notes that would have been converted will automatically be written-down to zero, each Note will be cancelled, and all accrued but unpaid distributions and any other amounts payable on each Note will be cancelled. 4. At the Trigger event, the Issuer shall redeem the Notes at a price equal to the Redemption Price and the holders of the Notes shall be deemed irrevocably to have directed and authorised the Issuer to apply such sum	*See EBA AT1 Report paragraph 43 on permanent write-down where conversion cannot be triggered.* *See provisions of Article 54(1)(d) CRR* *For the purpose of designing the templates, the EBA has considered only full conversion, as partial conversion, although not prohibited, is not a practice currently observed in the EU market.*

	on their behalf in paying up the relevant Common Equity Tier 1 instruments to be issued on conversion of their Notes. Any conversion of the Notes shall not constitute an event of default or a breach of the Issuer's obligations or duties or a failure to perform by the Issuer in any manner whatsoever and shall not entitle holders to petition for the insolvency or dissolution of the Issuer.	

1.3. Clauses for standard templates on partial temporary write-down

TOPIC	CLAUSES	*Comments for publication:*
A. Definitions	**"Write-Down":** means a reduction of the Current Principal Amount of each Note by the relevant Write-Down Amount and "Written Down" shall be construed accordingly	
	"**Original Principal Amount**": means the principal amount (which, for these purposes, is equal to the nominal amount) of the Notes at the Issue Date without having regard to any subsequent Write-Down or Write-Up.	
	"**Current Principal Amount**" means: (i) with respect to the Notes or a Note (as the context requires), the principal amount thereof, calculated on the basis of the Original Principal Amount, as such amount may be reduced, on one or more occasions, pursuant to the application of the loss absorption mechanism and/or reinstated on one or more occasions following a write-up, as the case may be, as such terms are defined in, and pursuant to, conditions in Consequences of a Trigger Event and Write-Up, respectively; or (ii) with respect to any other Loss Absorbing Instrument, the principal amount thereof (or amount analogous to a principal amount), calculated on an analogous basis to the calculation of the Current Principal Amount of the Notes.	
	"**Redemption Price**" means, in respect of each Note, the then Current Principal Amount thereof together with any accrued but unpaid distributions on the Notes (if any).	*As per paragraph 29 of the EBA AT1 Report, there is no specific concern from a purely prudential perspective in allowing calls below and at par, or at par only. The provision*

	Or "**Redemption Price**" means, in respect of each Note, the Original Principal Amount thereof together with any accrued but unpaid distributions on the Notes (if any).	*has been designed to allow both types of calls.*
	"**Loss Absorbing Instrument**" means at any time any Additional Tier 1 instrument (other than the Notes) of the Issuer which may have all or some of its principal amount written-down (whether on a permanent or temporary basis) or converted (in each case in accordance with its conditions or otherwise) on the occurrence or as a result of the Issuer CET1 Ratio failing below a certain trigger level.	
	"**Loss Absorbing Written down Instrument**" means at any time any Additional Tier 1 instrument (other than the Notes) of the Issuer which has had all or some of its principal amount written-down on a temporary basis. .	
	"**Write-Down Amount**" means, on any Write-Down Date, the amount by which the then Current Principal Amount of each outstanding Note is to be written down on such date, which shall be no less than the lower of: (i) the amount (together with the Write-Down of the other Notes and the write-down or conversion of any Loss Absorbing Instruments) required to restore fully the CET1 ratio of the Issuer to [x% - as specified in the Trigger Event Ratio] provided that, with respect to each Loss Absorbing Instrument, if any, such pro rata write-down or conversion is only taken into account to the extent required to restore the CET1 ratio to the lower of (a) such Loss Absorbing Instrument's trigger level and (b) the trigger level in respect of which a Trigger Event has occurred; (ii) the whole Current Principal Amount [if applicable]: provided, however, that the principal amount of a Note shall never be reduced to below one cent], if	*Where possible, it is a good practice to insert sequencing on loss absorption between full/partial write down/conversion of different categories of instruments.* *See provisions of Articles 54 CRR and EBA AT1 Report paragraphs 39-42: Only if required due to Commercial or Civil Law Provisions, the principal amount of a Note may never be reduced to below one cent in a loss absorption.*

	that Write-Down (together with the Write-Down of the other Notes and the write down or conversion of any Loss Absorbing Instruments) would be insufficient to restore the CET1 ratio as specified in (i). [Any Loss Absorbing Instrument that may be written down or converted to equity in full but not in part (save for any one cent floor) shall be treated as if its terms permitted partial write-down or conversion into equity, only for the purposes of determining the relevant pro rata amounts in the operation of write-down and calculation of write-down amount.]	
B. Consequences of a Trigger Event	If a Trigger Event occurs at any time, all of the following shall apply: 1. The Issuer shall immediately inform the Competent Authority of the occurrence of the Trigger Event; 2. The Issuer shall notify the holders of the Notes, in an irrevocable manner, that the Trigger Event has occurred ("**Trigger Event Notice"**); 3. The Issuer shall without delay, pro rata with the other Notes and any other Loss Absorbing Instruments, irrevocably and mandatorily operate a Write-Down of the Notes by the relevant Write-Down Amount (a "**Loss Absorption Event**"). The Write-Down of the Notes shall occur without delay and in any event not later than one month (or such shorter period as the Competent Authority may then require) from the occurrence of the relevant Trigger Event (such date being a "**Write-Down Date**"). To the extent that the Write-Down or conversion of any Loss Absorbing Instruments is not effective for any reason (i) the ineffectiveness of any such write-down or conversion shall not prejudice the requirement to effect a Write-Down of the Notes and (ii) the write-down or conversion of any Loss	*See provisions of Articles 54 CRR and EBA AT1 Report paragraphs 39-42: Only if required due to Commercial or Civil Law Provisions, the principal amount of a Note may never be reduced to below one cent in a loss absorption.* *See also paragraph 44 of the EBA AT1 Report stating that write-down (or conversion) should not be dependent on other instruments.*

	Absorbing Instrument which is not effective shall not be taken into account in determining the Write-Down Amount of the Notes. A Loss Absorption Event may occur on more than one occasion and the Notes may be Written Down on more than one occasion [*if applicable under national law*: provided, however, that the principal amount of a Note is never reduced to below one cent]. Any Write-Down of the Notes shall not constitute an event of default or a breach of the Issuer's obligations or duties or a failure to perform by the Issuer in any manner whatsoever and shall not entitle holders to petition for the insolvency or dissolution of the Issuer. Following a Write-Down of all or part of the Current Principal Amount, holders of the Notes will automatically irrevocably lose their rights to receive, and no longer have any rights against the Issuer with respect to, distributions on the Notes on and repayment of the Write-Down Amount (but without prejudice to their rights in respect of any reinstated principal amount following a Write-Up).	
C. Write-Up	After a write-down has been effected, the Current Principal Amount of each Note, unless previously redeemed or repurchased and cancelled, may be increased up to a maximum of its Original Principal Amount ("**Write-Up**") on a pro rata basis with any other Loss Absorbing Written-Down Instruments (based on the then prevailing Current Principal Amount thereof), provided that the Maximum Write-Up Amount is not exceeded, and in accordance with the following provisions and with the provisions of Article 21 of the CDR.	*See provisions of Articles 52 CRR and Article 21 Delegated Regulation (EU) No 241/2014 (Regulatory Technical Standards on own funds) and EBA AT1 Report paragraphs 86-88 and 97-98.* *As published in the EBA AT1 Report, the maximum amount to be used for the write-up is based on the use of the lower of*

	The "**Maximum Write-Up Amount**" to be attributed to the sum of the Write-Up together with the payment of distributions on the Current Principal Amount of Notes and any other Loss Absorbing Write-Down Instruments, if any, is the Net Profit (i) multiplied by the aggregate issued Original Principal Amount of all written-down AT1 instruments of the Issuer and (ii) divided by the Tier 1 Capital of the Issuer as at the date when the write-up is operated. The "**Net Profit**" means the lower of the net profit calculated on a [*as applicable:* consolidated/subconsolidated/individual] basis, after a formal decision confirming the final profits has been taken. Any Write-Up of the Notes and any other Loss Absorbing Written-Down Instruments or any payment of distributions on the Current Principal Amount of the Notes and any other Loss Absorbing Write-Down Instruments, if any, shall be operated at the full discretion of the Issuer and there shall be no obligation for the Issuer to operate or accelerate a write-up under specific circumstances. In total, the sum of the amounts of the Write-Ups of the Notes and any other Loss Absorbing Instruments together with the amounts of distributions on CET1 instruments of the Issuer and including distributions on Loss Absorbing Write-Down Instruments, shall not exceed the Maximum Distributable Amount. Write-Ups may be made on one or more occasions until the Current Principal Amount of the Notes has been reinstated to the Original Principal Amount. A Write-Up shall not be operated whilst a Trigger Event has occurred and is continuing. A Write-Up shall not be effected in circumstances where such Write-Up (together with the write-up of all other Loss Absorbing Written-Down Instruments) would cause a Trigger Event to occur.	*profits before application of the write-up formula as prescribed in the Regulatory Technical Standards on Own Funds. Nevertheless, the use of the 'lower of the write-up amount' obtained after application of the write-up formula comparing the results of the formula using on one hand the profits on an individual basis and on the other hand the profits on a consolidated basis, could also be envisaged especially in cases where it leads to more conservative results.* *The definition provides that "Net Profit" is the lowest of net profit determined on a consolidated, sub-consolidated or individual basis. This definition aims at reflecting the consolidation levels used to determine whether a Trigger Event has occurred. The definition is intended to match with the applicable levels of the requirements. Thus, if there is for example no trigger event at the individual level, there would be no need to refer to individual level net profits in the definition.*

1.4. Clauses for standard templates on full permanent write-down

TOPIC	CLAUSES	*Comments for publication:*
A. Definitions	**"Write-Down":** means a reduction of the Current Principal Amount of each Note where the entire Original Principal Amount of the Notes is irrevocably written down to zero on a permanent basis and cancelled with no possibility of reinstatement (in whole or in part) of the Original Principal Amount of the Notes at any time.	
	"**Original Principal Amount**": means, the principal amount (which, for these purposes, is equal to the nominal amount) of the Notes at the Issue Date.	
	"**Redemption Price**" means, in respect of each Note, the Original Principal Amount thereof together with any accrued distributions on the Notes (if any).	
	"**Loss Absorbing Instrument**" means any Additional Tier 1 instrument (other than the Notes) of the Issuer which may have all or some of its principal amount written-down (whether on a permanent or temporary basis) or converted (in each case in accordance with its conditions) on the occurrence or as a result, of the Issuer CET1 Ratio failing below a certain trigger level.	
B. Consequences of a Trigger Event	If a Trigger Event occurs at any time, all of the following shall apply: 1. The Issuer shall immediately inform the Competent Authority of the occurrence of the Trigger Event; 2. The Issuer shall notify the holders of the Notes, in an irrevocable manner, that the Trigger Event has occurred ("**Trigger Event Notice"**); 3. The Issuer shall without delay irrevocably and mandatorily operate a Write-Down of the Notes.	

	The Write-Down of the Notes shall occur without delay and in any event not later than one month (or such shorter period as the Competent Authority may then require) from the occurrence of the relevant Trigger Event (such date being a "**Write-Down Date**"). To the extent that the Write-Down or conversion of any Loss Absorbing Instruments is not effective for any reason the ineffectiveness of any such write-down or conversion shall not prejudice the requirement to affect a Write-Down of the Notes. Any Write-Down of the Notes shall not constitute an event of default or a breach of the Issuer's obligations or duties or a failure to perform by the Issuer in any manner whatsoever and shall not entitle holders to petition for the insolvency or dissolution of the Issuer.	

2. Optional provisions

TOPIC	CLAUSES	*Comments for publication:*
A. Definitions	"**Write-Down Amount**" means (…) (…) In addition to (i) and (ii), the Issuer may elect to Write Down the Current Principal Amount of the Notes following the occurrence of a Trigger Event such that the CET1 Ratios are restored to a level higher than xx per cent in the case of the CET1 Ratio of the Issuer and higher than xx per cent in the case of the CET1 Ratio of the Group.]	This optional clause is meant to address the case where some issuers would foresee the possibility to have a write-down amount higher than the amount strictly necessary to cure the trigger event. The first part of the clause would be identical to the "Write-Down Amount" clause as specified in Essential provisions, and would be complemented by the paragraph included in these Optional provisions.
B. Gross up clause	All payments in respect of the Notes by or on behalf of the Issuer shall be made without withholding or deduction for, or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or on behalf of the [Relevant Jurisdiction], unless such withholding or deduction is required by law. In the event where withholding or deduction is required by law, the Issuer will, to the extent that this would not exceed the Distributable Items, pay such additional amounts in respect of any payments on the Notes (but not, for the avoidance of doubt, in respect of the payment of any principal in respect of the Notes) as may be necessary in order that the net amounts in respect of any	*In line with paragraph 38 of the EBA AT1 Report :* *- it should be clear that the gross up clause gets activated by a decision of the local tax authority of the issuer, not of the investor.* *- increased payments should only be possible if they do not exceed distributable items.* *- gross up cases should be allowed only in relation to dividend/coupon withholding tax*

	distributions on the Notes received by the holders after the withholding or deduction shall equal the respective amounts which would have been receivable in respect of distributions on the Notes in the absence of the withholding or deduction.	
C. Substitution /variation clauses	Following the occurrence of aTax Law Change or Capital Event or in order to align the terms and conditions to best practices published from time to time by the European Banking Authority resulting from its monitoring activities pursuant to Article 80 of the CRR, the Issuer may, at any time, without the consent of the holders (and subject to receiving consent from the Competent Authority) either (a) substitute new notes for the Notes whereby such new notes shall replace the Notes or (b) vary the terms of the Notes, so that the Notes may become or remain compliant with CRR or such other regulatory capital rules applicable to the Issuer at the relevant time as specified under Capital Regulations and that such substitution or variation shall not result in terms that are materially less favourable to the holders (as reasonably determined by the Issuer).	*Substitution/variation clauses are acceptable.* *The reference to the consent from the Competent Authority should be adapted to local specificities.*
D. Pre-emption	No later than [10] Business Days following the Conversion Date, the Issuer may, in its sole and absolute discretion, elect that the Conversion Shares Depositary make an offer of all or some of the Conversion Shares to all or some of the Issuer's ordinary shareholders at such time at a cash price per Conversion Share equal to the Conversion Price, subject as provided below (the "Conversion Shares Offer"). The Issuer may, on behalf of the Conversion Shares Depositary, appoint a Conversion Shares Offer Agent to act as placement agent or other agent to facilitate the Conversion Shares Offer.	*Appropriate corresponding definitions of Conversion Shares Depositary and Conversion Shares Offer Agent in particular to be added where necessary where this clause is used.*