# Annex – EBA Comments on the RRM

| Issue | Key concern | EBA comment | Drafting suggestion |
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| **CRR2** | | | |
| **Waivers –** cross-border capital and liquidity waivers (articles 7, 8 CRR2)<br><br>(references: 215-291) | We understand the divergences of the Council's and the EP's positions as regards the possibility to waive prudential requirements on a cross-border basis. | At a minimum, if the EP and Council do not manage to reach a compromise on cross-border waivers, the EBA should be given the mandates proposed by ECON to report, monitor and develop a draft RTS on solvency and liquidity waivers. In particular, the EBA should monitor the practical use of waivers by competent authorities across the EU on the basis of a standard reporting format with regular reporting to the EC. The EBA should also develop technical standards for specifying the general conditions to be fulfilled for the application of waivers in order to ensure a proportionate and consistent application of all waivers across the EU. Lastly, the EBA should provide the EC with a | Subparagraph 1 to 3 Article CRR 7(2b): The EBA mandate proposed by ECON to report on the solvency waivers should also cover the liquidity waivers under Article 8.<br><br>Subparagraph 4 of Article CRR 7(2b): The EBA mandate proposed by ECON to develop a draft RTS for specifying the conditions set out in Art 7(2) should also cover the conditions as regards liquidity waivers under Art 8. The mandate needs redrafting as the EBA cannot decide to either develop RTS or recommend that the EC should submit a legislative proposal to revise the existing rules. The EBA RTS option seems reasonable to start with. |

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| | | general report covering solvency and liquidity waivers. | |
| **CET1 instruments** – eligibility criteria (articles 28, 29 CRR2)<br><br>(references: 364-367) | The amendments put forward outline changes to the current eligibility criteria for CET1 instruments. | We strongly suggest not modifying any CET1 eligibility criteria. | |
| **Software –** deduction from CET1 (article 36 (1) CRR2)<br><br>(references: 372 – 278) | The EP suggests to change the treatment of software, more precisely exempting it from being treated as intangible asset that need to be deducted from CET1. The EBA has concerns on the likely absence of value of software in resolution (and even more in liquidation). | Before taking a final decision on a possible change of treatment of these intangibles, which would likely be irreversible for the future in case of need, it is deemed necessary that the EBA is first investigating the issue and reports to the EU Commission for a final decision on retaining the current treatment or changing it. | |
| **Insurance participations –** no supplementary supervision (article 49 (1) CRR2)<br><br>(references: 392 – 404) | The EP has put forward amendments to modify the Danish compromise on deductions of insurance participations so that there will not be any requirement for supplementary supervision and an introduction of a laxer permanent treatment post 2022. | We are not in favour of a change in the current treatment of Article 49(1) since a relaxation of the current treatment (the so-called 'Danish Compromise') is not deemed to be desirable. | |
| **Reporting –** waivers on reporting requirements (article 99 (11) CRR2) | Co-legislators introduce a mechanism to ensure efficient reporting by avoiding duplications | However, we consider that the implementation of waivers should be centralised to the EBA to | |

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| (references: 909 – 913) | in reported data and tackling outdated reporting requirements. | support level playing field and efficient implementation. Regarding the re-use of data reported in other formats or granularity, it is of utmost importance the final reported data is identical to the EBA requirements. | |
| **Reporting** – consistent and integrated system (article 101a CRR2)<br><br>(references: 920 – 935) | The EP tasks the EBA to investigate the features and feasibility of the implementation of an integrated, standardised reporting system with central coordination of all data requests to institutions to avoid duplicate requests and facilitate the exchange of information between competent authorities.<br><br>Regarding the scope of the integrated framework, we consider that starting with supervisory reporting including the resolution data would be appropriate while the feasibility study should be envisaged with careful consideration, together with the relevant statistical authorities, on the feasibility to cover relevant statistical data. | We see benefit in this proposal as institutions report that the biggest burden with regard to reporting stems from multiple ad-hoc data requests; more coherence is therefore needed. The pace towards more coherence could be increased by embedding the mandate for a feasibility study immediately with a view to realise the EBA's role as a centralised hub in the nearby future. With completion of the EUCLID project next year, the EBA will have access to all regularly reported prudential and financial data of EEA credit institutions collected under the single rulebook.<br><br>Furthermore, we are committed to further develop standard dictionaries in order to increase | |

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| | | the convergence and consistence of all reporting requirements. We have already advanced in this and developed an integrated dictionary for all EU-level prudential and resolution reporting. | |
| **Reporting** – Frequency (articles 99, 101a, 394, 430)<br><br>(references: 864-914, 920-935, 2895-2923, 3774-3791) | The reporting frequency for the newly defined category of small and non-complex institutions is reduced with FINREP requirements only on an annual basis. | We acknowledge that there is a need to address the compliance burden, especially for small and non-complex institutions, but a reduced frequency is not an efficient way of achieving reduction in compliance costs. If key data (e.g. data on non-performing loans) is received on an annual basis only, competent authorities may have make recourse to statistical data collections or ad-hoc requests in order to perform their supervisory duties. In this case the harmonised reporting requirements (as part of the single rulebook) would become irrelevant for those institutions, as other non-harmonised data collections would replace those in practice. This would have significant negative impacts on the costs for supervisors and institutions and would undermine | |

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| | | the single rulebook. Ideally, no minimum or maximum frequencies should be specified in the Level 1 text for any reporting requirement; but if frequencies have to be specified, these should be specified as 'at least annually' for all requirements. | |
| **Counterparty Credit Risk –** (articles 277, 277a, 279a and 281) | Key concerns still need to be addressed with respect to EBA mandates | Issues remain however with respect to Articles 277 and 277a despite proposed amendments. In particular, Article 277(2) sets the principle of mapping of derivative transactions on the basis of the "primary risk driver" of the transaction. This notion is further used in Article 277a for the mapping one level below i.e. to hedging sets within a risk category, whereas for transactions with more than one material risk drivers allocated to more than one risk category according to Article 277(5), "primary risk driver" under Article 277a means something different i.e. it means in fact the "primary risk driver for the corresponding risk category" or the "most material risk driver of the transaction for the | The mandate in Article 277(6) needs to be redrafted with part a) of the mandate addressing the issue of the primary risk driver.<br><br>*"~~6~~5. EBA shall develop draft regulatory technical standards to specify in greater detail:*<br><br>*(a) a methodology for identifying the ~~only material~~ primary risk driver of transactions ~~other than those to which the derivative transactions referred to in~~ for the purpose of paragraph ~~3~~2 and for the purposes of Articles 277a, 279a and 281;* |

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| | | corresponding risk category". Ideally, this should be directly clarified in the level 1 text, if possible. Other occurrences of "primary risk driver" should be checked for consistency e.g. in Article 279a. | *(b) a methodology for identifying transactions with more than one material risk driver and for identifying the most material of these risk drivers for the purposes of paragraph ~~3~~4."*<br><br>In addition, if the changes are made in letter a/ of the mandate, the end of paragraph 277(2) should be removed, as it works only in the context of Article 277 and not for further occurrences of "primary risk driver": ~~"the primary risk driver shall be the only material risk driver of a derivative position~~". |
| **Counterparty Credit Risk –** (article 279a) | Key concerns still need to be addressed with respect to EBA mandates | With respect to the mandate in Article 279a(4), EBA already stated and still thinks that the definition of a long and a short position in the primary risk driver in Article 279a(2) is self-explanatory, without RTS to be needed. In addition, part b) of the mandate includes a reference to Article 277(3) (there is a typo there), which is now deleted. Therefore, | "(a) the ~~formula~~ approaches that institutions ~~shall~~ may use to calculate the supervisory delta of call and put options mapped to the interest rate risk category compatible with market conditions in which interest rates may be negative as well as the supervisory volatility that is suitable for ~~that formula~~ those approaches; |

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| | | EBA suggests removing the second part of the mandate under letter b). More generally, the second subparagraph of Article 279a(2) should also be removed, as a result of the removal of Article 277(3), which it is referring to.<br><br>With respect to part a) of the mandate, considering recent "international regulatory developments" that now allow in some cases the use of the internal delta computed by banks, in addition to the general approach, the mandate would have to be slightly amended to allow for inclusion of different possible treatments. The reference to formula has to be dropped as it cannot be reconciled with the use of internal delta. | ~~(b) what objective information concerning the structure and the intend of a transaction institutions shall use to determine whether a transaction that is not referred to in Article 277(2) is a long or short position in its primary risk driver;"~~ |
| **Market Risk –** FRTB (articles 325 – 325 bq)<br><br>(references : 1255 - 2845) | We take note of the still significant differences to bridge during trilogues between Parliament and Council positions, also due to Basel discussions still ongoing. | The EBA is actively participating and contributing to the Basel discussions on further amendments to the FRTB framework. It will therefore be important that co-legislators ensure that the Basel framework can be implemented | |

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| | | comprehensively beyond reporting requirements only. | |
| **Large Exposures** – exemptions (article 400 CRR2)<br><br>(references : 2961-2982) | The EC proposal removed only one exemption while Council and the EP follow the same pattern. The possibilities for competent authorities to grant exemptions have been increased. | We urge to reduce, where appropriate, the exemptions (discretionary and otherwise). This will simplify the regime as well as further align it to Basel standards and ultimately achieve more consistency across jurisdictions. | |
| **Large Exposures** – EBA report (article 507 CRR2)<br><br>(references : 4418 – 4423) | The co-legislators agree on giving the EBA a report on the monitoring of the use of exemptions. However, the EP restricts the scope of this report by deleting the reference to articles 400(1) and 400(2) CRR2. | The EBA strongly supports the mandate as outlined in article 507 CRR2 by the EU Commission and supported by the Council, especially considering that large exposures policies are key to proceed on waivers as proposed the EC. | |
| **NSFR** - Interdependent assets and liabilities (article 428f CRR2)<br><br>(references: 3194 - 3207) | Any special treatment as interdependent asset and liability should be under careful scrutiny in order to prevent regulatory arbitrage and misuse. | We welcome the EP's addition that competent authorities should consult the EBA prior to an approval process of interdependent assets and liabilities.<br>We also see added value in the EP's addition of paragraph 2a which requires the EBA to monitor the assets and liabilities as well as | |

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| | | products and services subject to special treatment and to determine whether suitability criteria are met. This is even more needed as the scope of interdependent assets and liabilities has been expanded compared to the recommendations of the EBA calibration report (EBA/Op/2015/22). Moreover, the EBA carefully cautions against an extension to covered bonds due to their changing cover pools and potential mismatch of assets and liabilities. | |
| **Leverage Ratio** - Exclusion of public development banks and promotional pass-through loans (article 429 2a new, 5a new)<br><br>(reference: 3652 a new) | We appreciate that our recommendations expressed in the leverage ratio calibration report (EBA/Op/016/013) are generally reflected in the proposals with regard to the calculation of numerator (Tier 1 capital) and denominator.<br><br>However, the scope of exemptions is possibly broadened and the definition of public banks has been relaxed under the co-legislators amendments. The ratio of public | In line with our letter to the EU Commission (EBA/2017/D/1293), we suggest including a mandate for the EBA to specify the rules applicable to the exemptions for public lending by public development credit institutions as well as the criteria under which the exposures would qualify for the exemption relating to pass-through promotional loans.<br>The EBA should moreover monitor both specific exemptions. | Addition to article 429a 5a new:<br><br>*EBA shall develop draft regulatory technical standards to specify further:*<br>*i) the meaning of 'public development credit institution' as referred to in point (d) of paragraph 1 and conditions in paragraph 2; and*<br>*ii) the conditions under which exposures may be excluded in accordance with point (e) of paragraph 1.* |

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| | sector lending by public development credit institutions and pass-through loans remains excluded from the denominator. | | *EBA shall submit those draft regulatory technical standards to the Commission by [2 years after entry into force?].*<br>*Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.*<br><br>Addition to article 429a 2a new:<br><br>*EBA shall monitor the application of Article 429a(1)(d), (e) and (2) and the range of practices across the Union. EBA shall report on the result of this monitoring to the Commission and advise if it considers that changes in the conditions listed in paragraph 2 and 4 are required.* |

## CRD5

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| **ESG Factors** – EBA report on ESG in SREP (article 98 (7c) CRD5)<br><br>(references: 351 – 361) | ECON proposes to give the EBA a mandate to investigate and report to the EP, Council and EC on technical criteria for SREP of risks | The EBA suggests that instead of outlining ESG factors in the SREP process, we should start investigating these new ESG | |

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| | arising from activities associated with environmental, social and governance objectives (with EBA guidelines if appropriate). | Factors in a cautiously practical manner in order to match ambitions and outcomes. We suggest producing a report capturing ESG factors in the context of risk assessments. In that report, the EBA could furthermore advise banks to develop tools in this area.<br>Moreover, this mandate may be linked to article 88 (1) CRD5 and the assessment of conflicts of interest. | |

## BRRD2

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| **MREL** – EBA MREL Reports (article 45l BRRD2)<br><br>(references: 618 – 637) | The EC and the co-legislators agree in the assignment of an extensive report to the EBA. | We suggest improving the mandates by splitting the report into two deliverables. On the one hand, we would propose reflecting our role in regularly monitoring the build-up of MREL (requirements, capacity and shortfalls, consistency of MREL decisions) through an explicit mandate for annual reports. On the other hand, elements linked to assessing the impact of MREL, for example on financial markets and innovation etc., require more time | |

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| | | and would be more suitable for a one-off report or a regular report every 4 or 5 years, in due time before the expiry of the transition period for banks of 2024. | |
| **Bail-in –** contractual recognition (article 55 BRRD2)<br><br>(references: 663- 692) | Strong support for the inclusion of a waiver to be exercised by the bank itself but would not support the EP proposal to introduce an artificially defined cap. | For practical reasons we would support the approach proposed by the council to have the bank itself make the judgement whether or not to waive the requirement. The use of the waiver would then be reviewed by the relevant resolution authority. This would prevent extensive pre approval process which would overburden RAs and slow down the inclusion of contractual language.<br><br>The EBA moreover supports the mandate for the RTS specifying the conditions under which it would legally or otherwise impractical to insert the contractual language as it will ensure the consistent implantation of the waiver. However, the EBA suggests a further refinement (cf. right column). | The EBA would suggest that (i) the wording specifying the conditions for the waiver should be refined along the following lines: "… impossible under the applicable law, or would cause substantial additional costs for the institution, without it being able to conclude substitute arrangements in a reasonable timeframe that would be compliant with paragraph 1", (ii) it should be merged with the existing one in Art 55 and (iii) that the timeline should be extended to 18 months. |