

**EBA Recommendation on the creation and  
supervisory oversight of temporary capital  
buffers to restore market confidence  
(EBA/REC/2011/1)**

**London, 8 December 2011**

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# **I. EBA Recommendation on the creation and supervisory oversight of temporary capital buffers to restore market confidence**

## **Status of the Recommendation**

1. This document contains a Recommendation issued on the combined legal bases of Article 16(1), Article 21(2)(b) and Article 31 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (*EBA Regulation*). In accordance with Article 16(3) of the EBA Regulation, competent authorities must make every effort to comply with the Recommendation.

2. The Recommendation includes the EBA's view of appropriate supervisory practice within the European System of Financial Supervision and of how Union law should be applied in a particular area. The EBA therefore expects all competent authorities to whom the recommendation applies to comply with it. Competent authorities to whom the recommendation applies should comply by incorporating it into their supervisory requirements and practices in line with the EBA's ongoing coordination of the capitalisation exercise.

## **Reporting Requirements**

3. Competent authorities must notify EBA whether they comply or intend to comply with this Recommendation, or, with reasons for non-compliance, by 8 February 2012<sup>1</sup>. Notifications should be sent by submitting the form provided in Section II of the present document to [compliance@eba.europa.eu](mailto:compliance@eba.europa.eu). Notifications should be submitted by persons authorised to notify EBA on behalf of their competent authorities.

4. The notification of competent authorities mentioned in the previous paragraph shall be published on the EBA website, pursuant to Article 16(3) of the EBA Regulation.

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<sup>1</sup> This 2 month period for "comply or explain" notification is set out at Article 16(3) of the EBA Regulation. However, given the deadline of 20 January 2012 contained in this Recommendation by which firms must submit their capital plans, competent authorities are encouraged to notify any non-compliance sooner if possible.

# **RECOMMENDATION OF THE EUROPEAN BANKING AUTHORITY**

**of 8 December 2011**

## **on the creation and supervisory oversight of temporary capital buffers to restore market confidence**

THE BOARD OF SUPERVISORS OF THE EUROPEAN BANKING AUTHORITY,

Having regard to Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, and in particular Article 16(1), Article 21(2)(b) and Article 31 thereof,

Having regard to Decision EBA DC 001 of the European Banking Authority ("EBA") of 12 January 2011 adopting the Rules of Procedure of the EBA Board of Supervisors, and in particular Article 3(5) and Article 14(2) thereof,

Whereas:

- (1) The EBA's Board of Supervisors has agreed that exceptional measures to restore confidence in the banking sector are urgently needed to enhance the quality and quantity of banks' capital to withstand shocks and to address systemic risk.
- (2) On 21 September 2011 the European Systemic Risk Board warned that sovereign risks and funding vulnerabilities within the EU banking sector threaten financial stability in the EU as a whole and urged supervisors to coordinate efforts to strengthen bank capital, taking into account the need for transparent and consistent valuation of sovereign exposures.
- (3) On 26 October 2011 Members of the European Council reached agreement on bank recapitalisation and funding. Annex 2 of the Euro Summit Statement of 26 October 2011 sets out the consensus on the so-called 'banking package'.
- (4) That consensus acknowledges the need for measures to enhance the quality and quantity of capital of banks to withstand shocks and to demonstrate this enhancement in a reliable and harmonised way.
- (5) The creation of a temporary capital buffer in the form of a capital target to be attained by 30 June 2012 is necessitated and justified by the exceptional circumstances now prevailing, in particular the extraordinary pressure on some euro area sovereigns and the

related impact on the cost and availability of bank funding. As coordinated EU action becomes effective in driving sovereign bond valuations away from today's distressed prices, the EBA will reconsider the ongoing need for and size of capital buffers against sovereign exposures.

- (6) National supervisory authorities, under the auspices of the EBA, must ensure that banks' plans to strengthen capital lead to an appropriate increase of own funds and that the capital target referred to in this Recommendation is not achieved through excessive deleveraging, disrupting lending into the real economy and cognisant of the broader context, including availability of bank funding.
- (7) Banks should first use private sources of funding to strengthen their capital position to meet the required target, including retained earnings, reduced bonus payments, new issuances of common equity and suitably strong contingent capital, and other liability management measures. National supervisory authorities may, following consultation with the EBA, agree to the partial achievement of the target by the sales of selected assets that do not lead to a reduced flow of lending to the EU's real economy but simply to a transfer of contracts or business units to a third party. Reductions in risk weighted assets due to the validation and roll-out of appropriate internal models to additional portfolios should not, in general, be allowed as a means of addressing a capital shortfall unless these changes are already planned and under consideration by the competent authority.
- (8) Annex II to this Recommendation sets out the EBA's coordinated methodology for identifying capital shortfalls according to the new capital target.
- (9) Annex III to this Recommendation sets out the EBA's common termsheet for a possible convertible instrument for inclusion within the temporary buffer.
- (10) This Recommendation shall be published on the EBA's website,

#### HAS ADOPTED THIS RECOMMENDATION:

1. The competent authorities listed in Annex I ("the competent authorities"), as the national home state authorities with lead responsibility for supervising the credit institutions listed within Annex II ("the credit institutions"), are recommended to ensure that the credit institutions attain, by 30 June 2012, and maintain until such time as this Recommendation has been amended, repealed or cancelled, the temporary capital buffer of Core Tier 1 referred to in paragraph 2 in their review, evaluation and determination of whether the own funds held by the credit institutions ensure a sound management and coverage of their risks.

2. To this end the competent authorities are recommended to ensure that the credit institutions build a temporary capital buffer to reach a 9% Core Tier 1 ratio by 30 June 2012, after the removal of the prudential filters on the sovereign assets in the available-for-sale portfolio and the conservative valuation of sovereign debt exposures in the held-to-maturity and loans and receivables portfolios, reflecting market prices as of 30 September 2011. The buffer should be created in accordance with the EBA's definitions and coordinated methodologies elaborated in Annexes II and III and is without prejudice to existing regulatory treatments.
3. The competent authorities are further recommended to:
  - a) require the credit institutions which are identified on the basis of 30 September 2011 figures as having a capital shortfall in accordance with the EBA's methodology to submit to them their capital plans to reach the 9% Core Tier 1 ratio by 20 January 2012;
  - b) defer their agreement to these capital plans until they have been reviewed, shared and consulted on with the EBA and with other relevant competent authorities within colleges of supervisors as appropriate, and seek to ensure that throughout the colleges' discussions of capital plans the need to maintain exposure levels of banking groups in all Member States is taken into account, recalling that if and where necessary the EBA will use its mediation role to that effect;
  - c) act in accordance with the EBA's coordination to seek to ensure that such plans do not lead to a reduced flow of lending to the EU's real economy by agreeing to reductions in risk weighted assets as a means of attaining the target only insofar as these are effected through the sale of selected assets. Reductions in risk weighted assets due to the validation and roll-out of appropriate internal models will not, in general, be allowed as a means of addressing a capital shortfall unless these changes are already planned and under consideration by the competent authority<sup>2</sup>.

Done at London, 8 December 2011

Andrea Enria  
Chairperson, EBA

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<sup>2</sup> Ordered deleveraging processes already formally agreed with international organisations or EU institutions before 26 October 2011 should, if submitted to and monitored by the competent authority, also be allowed. The same conditions would apply in some cases to formal restructuring plans.

## Annex I

The following list identifies the competent authorities with primary supervisory responsibility for the credit institutions listed within Annex II and therefore subject to this Recommendation<sup>3</sup>.

|     |                                                                                                             |    |
|-----|-------------------------------------------------------------------------------------------------------------|----|
| 1.  | Finanzmarktaufsicht (Financial Market Authority) <sup>4</sup>                                               | AT |
| 2.  | Banque Nationale de Belgique/Nationale Bank van België <sup>5</sup><br>(National Bank of Belgium)           | BE |
| 3.  | Central Bank of Cyprus                                                                                      | CY |
| 4.  | Bundesanstalt für Finanzdienstleistungsaufsicht<br>(Federal Financial Supervisory Authority)                | DE |
| 5.  | Finanstilsynet (Danish Financial Supervisory Authority)                                                     | DK |
| 6.  | Banco de España (Bank of Spain)                                                                             | ES |
| 7.  | Finanssivalvonta (Finnish Financial Supervisory Authority)                                                  | FI |
| 8.  | Autorité de Contrôle Prudentiel (Prudential Control Authority)                                              | FR |
| 9.  | Financial Services Authority                                                                                | UK |
| 10. | Pénzügyi Szervezetek Állami Felügyelete<br>(Hungarian Financial Supervisory Authority)                      | HU |
| 11. | Central Bank of Ireland                                                                                     | IE |
| 12. | Banca d'Italia (Bank of Italy)                                                                              | IT |
| 13. | Commission de Surveillance du Secteur Financier<br>(Commission for the Supervision of the Financial Sector) | LU |
| 14. | Malta Financial Services Authority                                                                          | MT |
| 15. | De Nederlandsche Bank (National Bank of Netherlands)                                                        | NL |
| 16. | Komisja Nadzoru Finansowego<br>(Polish Financial Supervision Authority)                                     | PL |
| 17. | Banco de Portugal (Bank of Portugal)                                                                        | PT |
| 18. | Finansinspektionen (Swedish Financial Supervisory Authority)                                                | SE |

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<sup>3</sup> Although both the Bank of Greece and the Norwegian Financial Supervisory Authority supervise banks within the sample, neither has been included in the list of addressees of this Recommendation because, in the first case, the pre-agreed arrangements under the EU/IMF assistance programme include quantitative capital targets which exceed the results of the EBA's capital exercise and, in the second, Norway as an EFTA State of the EEA does not fall within the current competence of the EBA.

<sup>4</sup> A substantial part of this amount is attributable to Österreichische Volksbank AG and should be considered as pro-forma. This group is currently under deep restructuring and evaluation of its business model after which Österreichische Volksbank AG shall end up in a regional active bank.

<sup>5</sup> Dexia group is included but the shortfall amount should be considered as pro-forma. After the cut-off date of 30 September, this Group has indeed been deeply restructured and a state guarantee will be provided on the funding issued by Dexia SA and its subsidiary Dexia Credit Local subject to the approval of the European Commission. The restructured group, which will not further develop significant cross-border activity and will gradually shrink in size, will not remain in the EBA sample. The sale of Dexia Bank Belgium has led to a fresh cash injection of 4bn Euros whilst the disposal processes of other important entities (Dexia Bank International à Luxembourg, RBC Dexia Investor Services, Dexia Asset Management, Dexia Municipal Agency and DenizBank) will aim to further strengthen its capital position.

*Annex II***Capital buffers for addressing market concerns over sovereign exposures****Methodological Note****Summary**

The capital package (hereafter, "capital exercise") as laid out in the EBA Recommendation on temporary capital buffers requires NSA's to ensure that relevant banks build up capital buffers to reach a level of 9% Core Tier 1 ratio by the end of June 2012, after the removal of the prudential filters on sovereign assets in the Available-for-Sale portfolio and prudent valuation of sovereign debt in the Held-to-Maturity and Loans and receivables portfolio, reflecting market prices as of 30 September 2011.

The objective of the capital exercise is to create an exceptional and temporary capital buffer to address current market concerns over sovereign risk and other residual credit risk related to the current difficult market environment. This buffer would explicitly not be designed to cover losses in sovereigns but to provide a reassurance to markets about banks' ability to withstand a range of shocks and still maintain adequate capital.

This note summarises the methodology adopted for identifying capital buffers according to the new targets at the bank level.

**Key dates**

Banks will be required to build up their capital buffers and reach a 9% Core Tier 1 ratio (hereafter, the "benchmark") by the end of June 2012, after the removal of the prudential filters on sovereign assets in the Available-for-Sale (AFS) portfolio and prudent valuation of sovereign debt in the Held-to-Maturity (HTM) portfolio and Loans and receivables portfolio, reflecting market prices. The reference date for computing the buffers with respect to the benchmark is the 30 September 2011, which also reflects the date for relevant market prices to be used, which were assessed by the EBA.

**Scope of application**



The capital exercise involves 71 banks. They are the banks that participated in the 2011 EU-wide stress test, although a subset of small non cross-border banks has been exempted.

(see list at page 15 below)

The capital package for Greece has been defined in such a way not to conflict with pre-agreed arrangements under the EU/IMF programme. The assistance programme already defines a set of targets for the banks in question, including quantitative objectives for the Core Tier 1 ratio, which are being monitored on a regular basis. For Greece the backstop measures exceed the EBA exercise and no new benchmarks have been set for Greek banks. Data for Greek banks are therefore not disclosed.

### **Definition of Core Tier 1**

The definition of Core Tier 1 is the same used in the 2011 EU-wide stress test (including existing capital instruments subscribed by governments). This definition of capital comprises the highest quality capital instruments (common equity) and hybrid instruments provided by governments as announced by the EBA for the 2011 EU-wide stress test.

This definition is based on existing EU legislation in the Capital Requirements Directive (CRD). It takes the existing EU definition of Tier 1 net of deductions of participations in financial institutions and it strips out hybrid instruments including existing preference shares. It recognises existing government support measures.

To ensure a fully harmonised computation by all the banks involved in the exercise, the EBA has mapped the different capital elements of Core Tier 1 to the current COREP reporting framework. Only commercial instruments of the highest quality are included in this Core Tier 1 definition – ordinary shares or similar instruments in line with the principles detailed in CEBS/EBA guidelines on core capital.

This means, in particular, that the commercial instruments included in Core Tier 1 have to be simple, issued directly by the institution itself and able, both immediately and without any doubt, to meet the criteria of permanence, flexibility of payments and loss absorption in going concern situations. The inclusion of government support measures in this definition reflects the expectation of supervisors that those instruments will be fully available to absorb losses and shelter banks in case of difficulties. Government support measures need to be consistent with the European State aid rules and approved by the European Commission.

### **Eligible capital instruments for meeting the buffers**

As a general rule, the capital buffers are to be covered with Core Tier 1 as defined in the EBA's 2011 EU-wide stress test. In particular, only commercial

instruments of the highest quality are included in this Core Tier 1 definition – ordinary shares or similar instruments in line with the principles detailed in CEBS/EBA guidelines on core capital. However, since buffers are intended to absorb potential (contingent) losses, newly issued private contingent convertibles are eligible to be considered as a part of the buffer if consistent with the EBA's common term sheet set out at Annex III.

Existing convertible capital instruments will not be eligible unless they will be converted into Core Tier 1 according to the above definition by end of October 2012.

## **RWA**

As in the 2011 EU-wide stress test, banks have been requested to adhere to CRD 3 for the calculation of the Core Tier 1 ratio, i.e., the changes to the trading book and securitisation treatment (so called Basel 2.5) are to be fully incorporated in the requirement (Stress VaR, IRC, Re-securitisations, Securitisation positions, Correlation trading portfolio).

Risk weighted assets (RWA) are computed by multiplying the total capital requirements (including the Basel 1 transitional floor) with 12.5.

Core Tier 1 ratio = Core Tier 1/RWA

## **Floors**

Banks using advanced measurement approaches for credit and operational risk (IRB and AMA) have been asked to apply the Basel 1 floors (80%). There are a variety of ways in which the floors have been applied nationally and banks have followed different approaches depending on the existing national guidance.

NSAs have been asked to choose one of two of the most widely used approaches, which are outlined below, and direct all banks in their jurisdiction to adopt that approach. Banks will disclose the floor treatment used in the templates and the EBA will publish a summary list. Banks on the standardized approach will show N/a in the template.

### Approach 1

According to approach 1, the transitional floor capital requirement is the maximum between 0 and the difference between the 80% of the Basel 1 (B1) capital requirement and total minimum own funds:

Transitional floor capital requirement =  $\text{Max} [(80\% \times (\text{Capital Requirement B1}) - (\text{Total Minimum Own Funds})), 0]$

where Total Minimum Own Funds = (Minimum Total Capital Requirement - IRB Shortfall - IRB Provision excess); IRB shortfall is the negative amount "IRB Provision shortfall and IRB equity expected loss amounts" deducted for the

computation of total own funds (COREP line 1.3.8) and IRB provision excess is the positive amount (COREP line 1.2.1.7) included in the calculation of total own funds.

This would assess the total minimum own funds that would be required under Basel 1 against total minimum own funds according to the relevant regulation. Since for the recapitalisation exercise banks have been required to apply the CRD3 market risk requirement the following formula should be applied:

Transitional floor capital requirement =  $\text{Max} [(80\% * (\text{Capital Requirement B1} - \text{MktRiskCapReq B1} + \text{MktRiskCapReq CRD3}) - (\text{Total Minimum Own Funds CRD3})), 0]$

where MktRiskCapReq B1 and MktRiskCapReq CRD3 are the capital requirements towards market risk under Basel 1 and the CRD3 respectively.

#### Approach 2

According to approach 2, the transitional floor capital requirement is the maximum between 0 and the difference between the 80% of the Basel 1 capital requirement and the total own funds:

Transitional floor capital requirement =  $\text{Max} [(80\% * \text{Capreq B1}) - \text{Total Own Funds}, 0]$

where Total Own Funds = Total Own Funds (gross/net of IRB shortfall/excess provision) – IRB shortfall – IRB Provision Excess; IRB shortfall is the negative amount “IRB Provision shortfall and IRB equity expected loss amounts” deducted for the computation of total own funds (COREP line 1.3.8) and IRB provision excess is the positive amount (COREP line 1.2.1.7) included in the calculation of total own funds.

This would assess the total own funds that would be required under Basel 1 against total own funds as of September 2011. Since for the recapitalisation exercise banks have been required to apply the CRD3 market risk requirement the following formula should be applied:

Transitional floor capital requirement =  $\text{Max} [(80\% * (\text{CapReqB1} - \text{MktRiskCapReq B1} + \text{MktRiskCapReq CRD3}) - (\text{Total Own Funds})), 0]$

where MktRiskCapReq B1 and MktRiskCapReq CRD3 are the capital requirements towards market risk under Basel 1 and the CRD3 respectively.

Under both approaches, the RWAs corresponding to the transitional floor capital requirement are computed as follows:

RWA Floor =  $12.5 * \text{Transitional floor capital requirement}$

### **Sovereign debt exposures**

Sovereign debt exposures for the purpose of the capital exercise are those towards the central, regional and local governments of the European Economic Area (EEA) countries. They include direct and indirect sovereign exposures (i.e., on- and off-balance sheet) in the trading and in the banking book. Central bank deposits are not included. Furthermore, the definition does not include exposures to counterparts (other than sovereigns) with full or partial guarantees from central, local or regional governments.

### **Prudential filters**

The AFS portfolio comprises equities, loans and receivables as well as other financial instruments (other available-for-sale assets). According to CEBS guidelines issued in 2004, fair-value revaluation reserves on AFS assets are subject to the following prudential filters:

- For equities, unrealised losses should be deducted after tax from original own funds and unrealised gains should only partially be included in additional own funds before tax.
- For loans and receivables, the unrealised gains and losses, apart from those related to impairment, are neutralised in own funds after tax.
- For other available for sale assets (e.g., debt securities, financial instruments subject to interest rate risk, etc.) two methods can be applied.
  - items classified in this portfolio are treated as equities,
  - items classified in this portfolio are treated as loans and receivables.

So far, there is no harmonised application of CEBS guidance on prudential filters for regulatory capital across EU jurisdictions. It is worth noting that prudential filters will be removed under Basel 3 rules.

### **Conservative valuation of sovereign exposures in the HTM and Loans and receivable portfolio**

Banks have been asked to carry out a conservative valuation of the EEA sovereign exposures booked in the HTM portfolio and loans and receivable portfolio, making use of existing market prices as of September 2011 and current bond yields by maturity as a reference for loans and non traded assets. Banks' assessment has been used for computing the buffers and checked by the EBA. The maturity buckets are 3 months, 1 year, 2, 3, 5, 10 and 15 years.

For the loans and advances in the HTM and L&R portfolios, a cap has been set at zero for valuation changes and therefore no offset is possible between potential gains and potential losses.

### **Tax treatment**

For HTM and loans and receivables holdings (i.e., the conservative valuation of sovereign exposures) the buffer has been computed gross of taxes.

For AFS holdings, the buffer has been computed following current CEBS guidance on tax for AFS prudential filters (i.e., net of tax).

### **Computation of the target capital buffers**

The capital buffers is computed as follows:

1. Buffer AFS. Prudential filters on EEA sovereign exposures held in the AFS portfolio are removed, i.e., banks are required to build a buffer of Core Tier 1 capital vis-à-vis prudential filters (BufferAFS). If the filter is positive, this implies a negative AFS valuation reserve (potential losses)<sup>6</sup>.
2. Buffer HTM. EEA debt sovereign exposures in the held-to-maturity (HTM) and loans and receivable portfolio are valued in a conservative fashion, making use end of September data as a reference for loans and non traded assets. Banks have thus been required to build a buffer of Core Tier 1 capital (BufferHTM) equal to the difference between the book value of those assets and their revalued amount.
3. Banks have been allowed to offset positive (i.e., potential losses) and negative value (i.e., potential gains) adjustments for the debt securities in the HTM and L&R portfolios. For loans and advances in the HTM and L&R portfolios banks cannot benefit from potential gains.
4. The sum of BufferAFS and BufferHTM has been capped to zero (i.e., banks cannot end-up with a negative buffer):

$$\text{BufferSOV} = (\text{BufferAFS} + \text{BufferHTM}) \geq 0$$

5. The capital shortfall is the sum of the difference between 9% of risk-weighted assets and the actual Core Tier 1 capital plus BufferSOV:

$$\text{Shortfall}_{\text{Sept2011}} = (0.09 \times \text{RWA}_{\text{Sept2011}} - \text{CT1}_{\text{Sept2011}}) + (\text{BufferSOV}_{\text{Sept2011}})$$

### **Actions to address identified shortfalls**

The amount of the capital shortfall has been set based on September 2011 sovereign exposure figures and a capital requirement determined by a 9% Core Tier 1 threshold. The buffer to be held against sovereign debt exposures is fixed (i.e. it will not be revised as a result of later market valuation changes and/or changes of the exposures, even though banks have until end June 2012 to meet the overall capital target).

$$\text{Shortfall}_{\text{Sept2011}} = (0.09 \times \text{RWA}_{\text{Sept2011}} - \text{CT1}_{\text{Sept2011}}) + (\text{BufferSOV}_{\text{Sept2011}})$$

By June 2012 the shortfall should be zero:

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<sup>6</sup> In countries where prudential filters are not applied, the impact of the valuation of assets in the AFS portfolio is directly reflected in the capital position.

$$\text{Shortfall}_{\text{Jun2012}} = 0 = (0.09 \times \text{RWA}_{\text{Jun2012}} - \text{CT1}_{\text{Jun2012}}) + (\text{BufferSOV}_{\text{Sept2011}})$$

In cases of compliance with this Recommendation banks will be required to submit capital plans to their national supervisors before 20th January 2012 setting out the proposed mix of actions, including new capital raising, asset disposals and other measures, to meet both the required 9% target and the sovereign market valuation buffer, thereby bringing the shortfall to zero by June 2012. Prior to agreeing these capital plans, NSAs will consult with relevant colleges of supervisors and consideration will be given at the European (EBA and ESRB) level as to how best to ensure that such plans do not lead to excessive deleveraging, disrupting lending into the real economy and cognisant of the broader context, including the availability of bank funding.

Banks should first use private sources of funding to create the capital buffer, including retained earnings, reduced bonus payments, new issuances of common equity and suitably strong contingent capital, and other liability management measures. Reductions in RWAs as a means of attaining the target should be limited to selected sales of assets that do not lead to a reduced flow of lending to the real economy but simply to a transfer of contracts or business units to a third party. Reductions in RWAs due to the validation and roll-out of appropriate internal models to additional portfolios should not, in general, be allowed unless these changes are already planned and under consideration by the competent authority.

## List of banks

| Code  | Name                                                            | Country |
|-------|-----------------------------------------------------------------|---------|
| AT001 | Erste Group Bank AG                                             | AT      |
| AT002 | Raiffeisen Zentralbank Österreich AG                            | AT      |
| AT003 | Österreichische Volksbank AG                                    | AT      |
| BE004 | DEXIA                                                           | BE      |
| BE005 | KBC BANK                                                        | BE      |
| CY006 | MARFIN POPULAR BANK PUBLIC CO LTD                               | CY      |
| CY007 | BANK OF CYPRUS PUBLIC CO LTD                                    | CY      |
| DE017 | DEUTSCHE BANK AG                                                | DE      |
| DE018 | COMMERZBANK AG                                                  | DE      |
| DE019 | Landesbank Baden-Württemberg                                    | DE      |
| DE020 | DZ BANK AG Dt. Zentral-Genossenschaftsbank                      | DE      |
| DE021 | Bayerische Landesbank                                           | DE      |
| DE022 | Norddeutsche Landesbank -GZ                                     | DE      |
| DE023 | Hypo Real Estate Holding AG, München                            | DE      |
| DE024 | WestLB AG, Düsseldorf                                           | DE      |
| DE025 | HSB Nordbank AG, Hamburg                                        | DE      |
| DE026 | Landesbank Hessen-Thüringen GZ, Frankfurt                       | DE      |
| DE027 | Landesbank Berlin AG                                            | DE      |
| DE028 | DekaBank Deutsche Girozentrale, Frankfurt                       | DE      |
| DE029 | WGZ BANK AG Westdt. Geno. Zentralbk, Ddf                        | DE      |
| DK008 | DANSKE BANK                                                     | DK      |
| DK009 | Jyske Bank                                                      | DK      |
| DK010 | Sydbank                                                         | DK      |
| DK011 | Nykredit                                                        | DK      |
| ES059 | BANCO SANTANDER S.A.                                            | ES      |
| ES060 | BANCO BILBAO VIZCAYA ARGENTARIA S.A. (BBVA)                     | ES      |
| ES061 | BFA BANKIA                                                      | ES      |
| ES062 | CAJA DE AHORROS Y PENSIONES DE BARCELONA                        | ES      |
| ES064 | BANCO POPULAR ESPAÑOL, S.A.                                     | ES      |
| FI012 | OP-Pohjola Group                                                | FI      |
| FR013 | BNP PARIBAS                                                     | FR      |
| FR014 | CREDIT AGRICOLE                                                 | FR      |
| FR015 | BPCE                                                            | FR      |
| FR016 | SOCIETE GENERALE                                                | FR      |
| GB088 | ROYAL BANK OF SCOTLAND GROUP plc                                | GB      |
| GB089 | HSBC HOLDINGS plc                                               | GB      |
| GB090 | BARCLAYS plc                                                    | GB      |
| GB091 | LLOYDS BANKING GROUP plc                                        | GB      |
| GR030 | EFG EUROBANK ERGASIAS S.A.                                      | GR      |
| GR031 | NATIONAL BANK OF GREECE                                         | GR      |
| GR032 | ALPHA BANK                                                      | GR      |
| GR033 | PIRAEUS BANK GROUP                                              | GR      |
| GR034 | AGRICULTURAL BANK OF GREECE S.A. (ATEbank)                      | GR      |
| GR035 | TT HELLENIC POSTBANK S.A.                                       | GR      |
| HU036 | OTP BANK NYRT.                                                  | HU      |
| IE037 | ALLIED IRISH BANKS PLC                                          | IE      |
| IE038 | BANK OF IRELAND                                                 | IE      |
| IE039 | IRISH LIFE AND PERMANENT                                        | IE      |
| IT040 | INTESA SANPAOLO S.p.A                                           | IT      |
| IT041 | UNICREDIT S.p.A                                                 | IT      |
| IT042 | BANCA MONTE DEI PASCHI DI SIENA S.p.A                           | IT      |
| IT043 | BANCO POPOLARE - S.C.                                           | IT      |
| IT044 | UNIONE DI BANCHE ITALIANE SCPA (UBI BANCA)                      | IT      |
| LU045 | BANQUE ET CAISSE D'EPARGNE DE L'ETAT                            | LU      |
| MT046 | BANK OF VALLETTA (BOV)                                          | MT      |
| NL047 | ING BANK NV                                                     | NL      |
| NL048 | RABOBANK NEDERLAND                                              | NL      |
| NL049 | ABN AMRO BANK NV                                                | NL      |
| NL050 | SNS BANK NV                                                     | NL      |
| NO051 | DnB NOR Bank ASA                                                | NO      |
| PL052 | POWSZECHNA KASA OSZCZĘDNOŚCI BANK POLSKI S.A. (PKO BANK POLSKI) | PL      |
| PT053 | CAIXA GERAL DE DEPÓSITOS, SA                                    | PT      |
| PT054 | BANCO COMERCIAL PORTUGUÊS, SA (BCP OR MILLENNIUM BCP)           | PT      |
| PT055 | ESPÍRITO SANTO FINANCIAL GROUP, SA (ESFG)                       | PT      |
| PT056 | Banco BPI, SA                                                   | PT      |
| SE084 | Nordea Bank AB (publ)                                           | SE      |
| SE085 | Skandinaviska Enskilda Banken AB (publ) (SEB)                   | SE      |
| SE086 | Svenska Handelsbanken AB (publ)                                 | SE      |
| SE087 | Swedbank AB (publ)                                              | SE      |
| SI057 | NOVA LJUBLJANSKA BANKA D.D. (NLB d.d.)                          | SI      |
| SI058 | NOVA KREDITNA BANKA MARIBOR D.D. (NKBM d.d.)                    | SI      |

### Annex III

#### Buffer Convertible Capital Securities

#### Common Term Sheet

**in yellow:** provisions to be determined on a case-by-case basis and not framed precisely by EBA except setting up minimum requirements to be met. All these provisions will have to be agreed by the relevant national supervisor (who may ask for stricter requirements than the minimum requirements or ask for specific requirements when none is mentioned in this term sheet).

|                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Issuer</b>                   | [•] (“Bank”, “Issuer”)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Securities Offered</b>       | Buffer Convertible Capital Securities ("BCCS")                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Total issue size</b>         | Up to € [•]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Nominal Value</b>            | € [•]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Issue Price</b>              | At par                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Issue Date</b>               | [•] <b>To be determined on a case by case basis - minimum requirement: not later than 30 June 2012</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Status and Subordination</b> | <p>The BCCS constitute direct, unsecured, undated and subordinated securities of the Issuer and rank <i>pari passu</i> without any preference among themselves. They are fully issued and paid-in.</p> <p>The rights and claims of the holders of BCCS of this issue:</p> <ul style="list-style-type: none"> <li>• are subordinated to the claims of the creditors of the Bank, who are: <ul style="list-style-type: none"> <li>- depositors or other unsubordinated creditors of the Bank</li> <li>- subordinated creditors, except those creditors whose claims rank or are expressed to rank <i>pari passu</i> with the claims of the holders of the BCCS</li> <li>- holders of subordinated Bonds of the Bank.</li> </ul> </li> <li>• rank <i>pari passu</i> with the rights and claims of holders of other junior capital subordinated issues qualifying as Tier 1 capital</li> <li>• have priority over the ordinary shareholders of the Bank</li> </ul> |



|                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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|                                           | <p>For the avoidance of doubt, the BCCS will be treated for regulatory purposes as hybrid instruments and will qualify as Tier 1 capital.</p> <p>The amount BCCS holders may claim in the event of a winding-up or administration of the Bank is an amount equal to the principal amount plus accrued interest but no amount of cancelled coupon payments will be payable.</p> <p>Cancellation of any payment does not constitute an event of default and does not entitle holders to petition for the insolvency of the Bank.</p> <p>In the event of Conversion of the BCCS to shares, the holders of BCCS will be shareholders of the Bank and their claim will rank <i>pari passu</i> with the rights and claims of the Bank's ordinary shareholders.</p> |
| <b>Maturity date</b>                      | Unless previously called and redeemed or converted, the BCCS are perpetual without a maturity date.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Coupon</b>                             | <p>The BCCS will bear an interest of [•]</p> <p><i>To be determined on a case by case basis - minimum requirement: no incentive to redeem to be included.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Interest Payment and Interest Date</b> | <i>To be determined on a case by case basis - minimum requirement: dates to be aligned with dividend payment dates</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Conversion Rate</b>                    | <i>To be determined on a case by case basis- minimum requirement: either i) specification of a predetermined range within which the instruments will convert into ordinary shares or ii) a rate of conversion and a limit on the permitted amount of conversion.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Conversion Period</b>                  | <i>To be determined on a case by case basis. The provisions to be included shall not undermine the conversion features of the instrument and shall not in particular restrict the automaticity of the conversion.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

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| <b>Issuer's Call Option</b>          | <p>The Bank may, on its own initiative, elect to redeem all but not some of the BCCS, at their principal amount together with accrued interest, on fifth anniversary or any other Interest Payment Date thereafter, subject to the prior approval of the [name of the national supervisor] and provided that:</p> <p>(a) the BCCS have been or will be replaced by regulatory capital of equal or better quality; or</p> <p>(b) the Bank has demonstrated to the satisfaction of the [name of the national supervisor] that its own funds would, following the call, exceed by a margin that the [name of the national supervisor] considers to be significant and appropriate, (i) a Core Tier 1 Ratio of at least 9% by reference to the EBA Recommendation EBA/REC/2011/1 published on 8 December 2011 or (ii) in case the Recommendation referred to under (i) has been repealed or cancelled, the minimum capital requirements in accordance with the final provisions for a Regulation on prudential requirements for credit institutions and investment firms to be adopted by the European Union.</p> |
| <b>Optional Coupon Cancellation</b>  | <p>The Bank may, at its sole discretion at all times, elect to cancel any interest payment on a non cumulative basis. Any coupon not paid is no longer due and payable by the Bank. Cancellation of a coupon payment does not constitute an event of default of interest payment and does not entitle holders to petition for the insolvency of the Bank.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Mandatory Coupon Cancellation</b> | <p>Upon breach of applicable minimum solvency requirements, or insufficient Distributable Items, the Bank will be required to cancel interest payments on the BCCS.</p> <p>The Bank has full discretion at all times to cancel interest payments on the BCCS.</p> <p>The [name of the national supervisor] may require, in its sole discretion, at all times, the Bank to cancel interest payments on the BCCS.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

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|                             | <p>“Distributable Items” means the net profit of the Bank for the financial year ending immediately prior to the relevant coupon payment date together with any net profits and retained earnings carried forward from any previous financial years and any net transfers from any reserve accounts in each case available for the payment of distributions to ordinary shareholders of the Bank.</p> <p><i>[formulation to be amended as far as necessary according to applicable national law]</i></p> <p>Any coupon payment cancelled will be fully and irrevocably cancelled and forfeited and will no longer be payable by the Bank. Cancellation of a coupon payment does not constitute an event of default of interest payment and does not entitle holders to petition for the insolvency of the Bank.</p> |
| <b>Mandatory Conversion</b> | <p>1/ If a Contingency Event or Viability Event occurs, the BCCS shall be mandatorily fully converted into Ordinary Shares.</p> <p><i>2/ Open option - to be determined on a case by case basis: possibility to include a mandatory conversion at a fixed date.</i></p> <p>The Issuer undertakes to take all necessary measures to propose at one or more general meetings to be convened for this purpose the increase of the authorised share capital of the Bank so as the authorised share capital of the Bank to be sufficient for the Mandatory Conversion of all of the BCCS. All necessary authorisations are to be obtained at the date of issuance of the BCCS.</p>                                                                                                                                       |
| <b>Contingency Event(s)</b> | <p>“Core Tier 1 Ratio Contingency Event” means the Bank has given notice that its Core Tier 1 Ratio is below 7% by reference to the EBA Recommendation EBA/REC/2011/1. The Bank shall give notice without delay when it has established that its Core Tier 1 Ratio is below 7%.</p> <p>For the purpose of this issuance, the Core Tier 1 Ratio is</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

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|                               | <p>equal to the definition used in the European Banking Authority ("EBA")'s 2011 EU-wide stress test (<a href="http://www.eba.europa.eu/News--Communications/Year/2011/The-EBA-details-the-EU-measures-to-restore-confide.aspx">http://www.eba.europa.eu/News--Communications/Year/2011/The-EBA-details-the-EU-measures-to-restore-confide.aspx</a>). This definition excludes all private hybrid instruments which encompass all the BCCS to be issued under this term sheet.</p> <p>“Common Equity Tier 1 Capital Ratio Contingency Event” means that, after 1 January 2013, the Bank has given notice that its “Common Equity Tier 1 Capital Ratio”, in accordance with the final provisions for a Regulation on prudential requirements for credit institutions and investment firms to be adopted by the European Union and taking into account the transitional arrangements, is below 5.125% [<i>or a level higher than 5.125% as determined by the institution - to be determined on a case by case basis</i>]. The Bank shall give notice as soon as it has established that its Common Equity Tier 1 Capital Ratio is below 5.125% [<i>or a level higher than 5.125% as determined by the institution - to be determined on a case by case basis</i>].</p> <p>The Common Equity Tier 1 Capital Ratio Contingency Event is applicable as of 1 January 2013. In addition, the Core Tier 1 Ratio Contingency Event remains applicable after 1 January 2013 as long as the EBA Recommendation EBA/REC/2011/1 has not been repealed or cancelled.</p> |
| <p><b>Viability Event</b></p> | <p>A Viability Event is the earlier of:</p> <p>a) a decision that a conversion, without which the firm would become non-viable, is necessary, as determined by [name of the relevant authority]; and</p> <p>b) the decision to make a public sector injection of capital, or equivalent support, without which the firm would have become non-viable, as determined by [name of the relevant authority].</p> <p><i>[In case a statutory approach is claimed, the clause will have to make clear that the jurisdiction has an equivalent regime in place].</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

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|----------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Holders right for Conversion</b>                                        | <i>Open option - to be determined on a case by case basis: possibility to include a right for holders to convert the BCCS into shares.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Substitution, Variation, Redemption for Regulatory / Legal Purposes</b> | <p>In case of changes in the laws or the relevant regulations of the European Union or of the [name of the country] or the [name of the national regulator], which would lead in particular to the situation where the proceeds of the BCCS do not qualify after January 2013 as Additional Tier capital in accordance with the final provisions for a Regulation on prudential requirements for credit institutions and investment firms to be adopted by the European Union, the Bank may, with the prior consent of the [name of the national regulator], redeem all the BCCS together with any accrued interest outstanding.</p> <p>Alternatively, the BCCS, with the consent of the [name of the national supervisor], may be exchanged or their terms may be varied so that they continue to qualify as Additional Tier 1 capital or Tier 2 capital in accordance with the final provisions for a Regulation on prudential requirements for credit institutions and investment firms to be adopted by the European Union or qualify as senior debt of the Bank. Substitution/Variation should not lead to terms materially less favourable to the investors except where these changes are required by reference to the final provisions for a Regulation on prudential requirements for credit institutions and investment firms to be adopted by the European Union.</p> |
| <b>Use of Proceeds</b>                                                     | <p>The net proceeds of the Issue will be used to maintain a Core Tier 1 Ratio of at least 9% by reference to the EBA Recommendation EBA/REC/2011/1.</p> <p>For the avoidance of doubt, the BCCS features do not prejudice for the future regulatory framework to be applicable in accordance with the final provisions for a Regulation on prudential requirements for credit institutions and investment firms to be adopted by the European Union.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

## II. Form for Confirmation of Compliance with Guidelines and Recommendations

Member:

Competent authority:

Guidelines/Recommendations:

Name:

Position:

Telephone number:

Email address:

I am authorised to confirm compliance with the Guidelines and/or Recommendations on behalf of my competent authority: ☐ **Yes**

The competent authority complies or intends to comply with the Guidelines and/or Recommendations:

☒ **Yes**      ☐ **No**      ☐ **Partial compliance**

My competent authority does not, and does not intend to, comply with the guidelines and/or Recommendations for the following **reasons**<sup>7</sup>:

Details of the partial compliance and reasoning [TBC]:

**Please send this notification to [compliance@eba.europa.eu](mailto:compliance@eba.europa.eu).**

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<sup>7</sup> In cases of partial compliance, please include the extent of compliance and of non-compliance. The fact that the competent authority does not intend to comply, fully or partially, will be published. The EBA will decide whether to publish the reasons provided by the competent authority for not complying, after giving advance notice of such publication in accordance with Article 16(3) of the EBA Regulation.