EACB Key priorities

on the Capital Requirements Regulation (**CRR**) as regards Capital, Leverage ratio and Liquidity; and on Capital Requirements Directive IV (**CRD IV**) regarding corporate governance

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The voice of 4.000 local and retail banks, 50 million members, 176 million customers

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The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4.000 locally operating banks and 63.000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 176 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 50 million members and 750.000 employees and have a total average market share of about 20%.

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EACB Key Priorities

The EACB supports the revision of the regulatory framework for banks and the aim to increase the stability of the banking system. The EACB considers however that a number of aspects, highly relevant for co-operative banks, need to be taken into account and certain provisions require clarifications and adjustments. The EACB's key concerns can be summarized as follows:

I. General

- ***Proportionality***:

It should be stipulated both in the CRR and in the CRD that any standards adopted by EBA shall take into consideration the particularities of company models (e.g. co-operative and mutual) as well as the nature and scale of their activities.
✓ The EACB is in favour of AM 10 of Draft Report Mr. Karas*

II. Capital

1. ***Classification of cooperative capital instruments as CET 1***

a. ***Clarification of Articles 25, and 27 CRR***: There should be no doubt that Art. 27 CRR imposes requirements that modify some of the requirements of Art. 26 CRR.
✓ EACB welcomes AM 21 of the Draft Report of Mr. Karas*
➢ However, EACB would like to have similar AM also in Art. 27(1) see p. 8

b. ***EBA Mandate***: it is necessary to clarify that the condition and especially the EBA mandate regarding *"features that could cause the condition of the institution to be weakened as a going concern during periods of market stress"* must not lead to additional requirements for co-operative shares through the backdoor.
✓ EACB strongly supports AM 22, 23 and 24 Draft Report Karas*

2. Co-operative specificities:

The wording of Art. 25(1), 26(1) and 27(4) do not sufficiently consider co-operative realities: a) co-operatives which are subsidiaries, b)which instruments have uneven rights to distribution, or c) which have different categories of shares. Substance over form should be the guiding principle in determining instruments eligible for CET1.
➢ EACB suggests modification to Art. 25, see p. 9
➢ We appreciates AM 26 of Mr. Karas but suggests to further clarify it, see p.10
➢ We also suggest amending Art. 27(4) according to the Council text, see p. 11

3. ***Financial conglomerate supervision***:

It is appreciated that the CRR refers to Directive 2002/87/EC to allow for joint supervision for banks and insurance companies in a financial conglomerate and the specific rules regarding the calculation of capital requirements
➢ EACB supports maintaining the concept of Art. 46(1)

4. ***Deductions – Holdings within Cooperative Groups***:

We appreciate that the CRR in Article 46(3)(b) CRR reflects the specific situation of co-operative banks, where local banks often hold relevant participations in their central bank and were all these institutions are part of an institutional protection scheme. It has to be avoided however that this rule is significantly modified by regulatory technical standards therefore Article 46(5) should be deleted CRR. In addition, the rule should reflect more appropriately the reality of all co-operative banking groups in Europe
✓ EACB welcomes AM 33 of Mr. Karas to Art. 46(5)*
➢ EACB suggests some modification to Art. 46(3)(b), see p. 12-13

5. ***Own Funds- Additional Tier 1 and 2 Capital:***

a. ***Loss absorbency at point of non-viability***: These requirements should not be applied to all banks, but be limited to G-SIFIs.
   - ➢ EACB proposes an amendment to Recital 27, see p. 14

b. ***Conversion and Write-Down of additional Tier 1***: Requiring all Tier 1 instruments to be written down permanently or convert into equity upon a trigger event would hamper the functioning of co-operative banks. Absorbing losses on a going concern basis can be pursued by temporary write down and write up.
   - ➢ We propose amending Art. 49 based on Council text see p. 15-16

6. ***Minority interest:***

The calculation method in Art. 79 CRR should reflect all capital requirements, also those imposed on the subsidiary according to Pillar 2.
- ✓ EACB appreciates AM 38-39, 41-42-43-44-45 of Mr. Karas to Art. 79 CRR*
- ➢ EACB would suggest an additional Amendment to Art. 79 CRR, see p. 17-18

7. ***RWA SME loans***:

The revised framework should not lead to higher capital requirements for the retail business, in particular not for loans to SMEs. We suggest introducing a balancing factor of 0,7619 which would widely neutralize the impact of the suggested increase of capital requirements.
- ✓ EACB welcomes AM 55 of Draft Report Mr Karas*
- ➢ It necessary to extend the balancing factor to the standardised approach in Art. 118, see p. 19

8. ***Transitional provisions***:

In order to avoid any "cliff effects" the transition rules need to be complemented:

a. The ***Cut-off date*** for any capital issued should not be the date of the proposal of the CRR as stated in Art. 463(1) CRR, but rather the date of its adoption
   - ✓ EACB appreciates that Mr. Karas takes this up by AM 124*

b. ***Application large exposure regime***: the revision of the definition of capital and of the rules for deductions will lead to more stringent rules regarding large exposures. Their implementation may require many banks to change the structure of their portfolio, which requires a reasonable amount of time
   - ✓ EACB welcomes AM 127 to Art. 471 CRR in Draft Report of Mr. Karas

c. ***Basel I Floor***: Prolongation of the "floor" would penalize retail banking activities
   - ➢ EACB suggests to delete Recital 56 and article 476, see p. 20-21

III. Large Exposures

- ***Eligible Capital***:

The eligible capital for large exposure regime in Art. 4(23) CRR should continue to be calculated on the basis of ***all*** Tier 1 and Tier 2 capital.
- ➢ EACB suggests an amendment to this Article, see p. 23

IV. Leverage Ratio

- ***Frequency of calculation:***

The leverage ratio in Art. 416(2) should be a permanent instrument in Pillar 2 which should be calculated on a quarterly rather than on a monthly basis
- ✓ EACB appreciates AM 96 and AM 139 of the Draft Report of Mr. Karas*

V. Liquidity

1. ***Definition of Highly Liquid Assets*:**

Liquid assets should be more broadly defined in Art. 404 CRR to mitigate systemic liquidity risk. Criteria for liquid asset eligibility should enable liquidity buffer diversification beyond sovereign debt issuers. Central bank eligible assets should be part of the liquidity buffer, potentially accompanied by a cap on the portion of the total liquidity buffer in order to diversify liquidity buffer away from the sole "market-liquidity" criterion.

- ➢ EACB suggests amending Art. 404 CRR, see p. 25-28
- ➢ Amendments to Art. 405 are also required to ensure an appropriate diversification and availability of assets, see p. 29-30

2. ***Treatment of cooperative groups***

Liquidity systems of co-operative banks have proven to be stable throughout the whole crisis, however their specificities do not seem to be sufficiently reflected in the CRR:

a. The ***application of a consolidated approach*** regarding liquidity requirements in Art. 7(2)) should also be possible for co-operative groups which are consolidated according to Article 12(1) of the Seventh Directive (1983/349/EC) and to groups that form a liquidity system according to Article 389(2)(d) CRR
   - ✓ EACB welcomes AM 18 of Mr. Karas*
   - ➢ An additional amendment to Art. 7(2) is necessary, see p.31

b. A ***consolidated approach to liquidity in IPS*** (Institutional Protection Schemes) should not cause any duplication of requirements and interferences in rules of IPS.
   - ➢ EACB proposes an amendment to Art. (7)(2)(3) CRR, see p.32

c. ***Inflows and Outflows in IPS***: The rules granting supervisors increased discretion on a case-by-case basis regarding inflows and outflows as in Art. 410(8) and 413(4) CRR has to be extended to IPS and other liquidity schemes
   - ➢ We suggests an amendment to Art. 410(8) based on the Council text see p. 33
   - ➢ an amendment to Art 413(4) is also suggested see p. 34

d. ***Inflows from operational deposits***: Since money cannot simply go lost, there should be a 25% inflow from monies related to operational deposits and within a liquidity system/institutional protection scheme (Article 413(2)(c) CRR) in order to compensate for the run off of 25% stipulated by Article 410(4) CRR
   - ➢ EACB suggests to amend Article 413(2)(c) CRR, see p. 35

e. **75% cap on inflows**: there should not be cap on inflows for monies as stated in Article 413(1) CRR within groups according to Article 389(2)(d) CRR
   - ➢ EACB suggests two amendments to Art. 413(1), see p. 36

3. ***Minimum reserves***:

In some co-operative groups banks fulfill their minimum reserve requirements by giving their monies to their sectoral central bank and which then passes these monies on to a national central bank. These monies have to be neutralized regarding the Liquidity requirements (Cf. Art. 410 CRR).

- ➢ EACB considers an Amendment to 404(1) is necessary see p.37
- ➢ Also new amendments to Art 410 and Art. 413 are necessary, see p. 38-39

4. ***Corporate Run-off Rate***:

The 75% run-off rate applied to corporate and non-financial institutions deposits could be punitive and should be adapted to actual experience.

- ➢ EACB suggests modifying 75% into a 50% run-off rate in Art. 413(4), see p. 40

5. ***Recognition of deposits as inflows***:

Supervisors should have more discretion regarding the treatment of deposits as inflows

- ➢ EACB suggests to modify Article 413(4) CRR, see p. 41

VI. Corporate Governance

1. ***One – two tier governance structures***:

It is necessary to take account of two tier and other existing corporate structures. There are different two tier governance structures

✓ EACB welcomes AM 2 of Draft Report Mr. Karas on CRD IV

2. ***Acknowledgement existing structures:***

Any suggested provisions on corporate governance should refrain from any intervention into these existing governance structures and use terminology as neutral as possible in order to acknowledge the differences

➢ EACB suggests to deleted AM 10, 11, 12 and 13 of Draft Report Karas*

3. ***Extension to count mandates as one in non-consolidated groups:***

It is necessary to extend this exemption also to the different non-consolidated cooperative groups (Article 87(1)(a) subparagraph 4 CRD IV)

➢ EACB suggests specific Amendments to Art. 87(1) see p. 43

*: The amendments of the Draft Report of Mr. Karas which are supported or not supported by the EACB are not integrated in this paper.

For an overview of the Amendments of Mr. Karas we appreciate, do not support; and specifically those that we partly appreciate and which require further modifications or new suggestion for amendments (which are further elaborated in this Key priorities paper), please see pp. 44-47

II. Capital Issues

EACB Suggested Amendments

Clarification - Capital Instruments of Co-operatives as CET 1

EACB suggested Amendment
to Proposal for a Regulation
Article 27– paragraph 1

Text proposed by the Commission	*Amendment*
(1) Capital instruments issued by mutuals, cooperative societies and similar institutions shall qualify as Common Equity Tier 1 instruments only if the conditions laid down in Article 26 and this Article are met.	(1) Capital instruments issued by mutuals, cooperative societies and similar institutions shall qualify as Common Equity Tier 1 instruments only if the conditions laid down in Article 26 and ***amended by*** this Article are met.

Justification

- The EACB appreciates the attention dedicated to the particularities of their common equity instruments (Articles 25, 27 CRR).
- Specific rules for those instruments are necessary as well as justified to reflect the specificities of those instruments, which have proven their value throughout the recent and previous crises.
- However, the wording, of the relevant articles, especially their interconnectedness, is unclear.
- The wording of Article 25 (1)(b) stipulates that co-operative banks' instruments have to fulfill the criteria of both Article 26 and 27.
- This would imply, however, that contradicting conditions have to be met (for example, it is not possible to meet both the requirements of Article 26(1)(f) and (g) and 27(2) and (4)).
- In order to avoid any misunderstandings, EACB suggests to amend Article 27(1) in accordance with Mr. Karas AM 21 to Article 25(1) (b)

Cooperative specificities

a. Subsidiaries of co-operative organisations

EACB suggested Amendment
Proposal for a Regulation
Article 25 – paragraph 1-subparagraph a

Text proposed by the Commission	*Amendment*
(a) the institution is of a type that is defined under applicable national law and which competent authorities consider to qualify as a mutual, cooperative society or a similar institution for the purposes of this Part;	(a) the institution is of a type that is defined under applicable national law and which competent authorities consider to qualify as a mutual, cooperative society or a similar institution ***or a credit institution which is a subsidiary of a mutual, co-operative society or similar institution, provided that, and for as long as, 100% of the ordinary shares in issue in the credit institution is held, directly or indirectly, by mutuals, co-operative societies or similar institutions or where applicable under national law all current and future obligations of the subsidiary are guaranteed by mutuals, cooperative societies or similar institutions, in each case*** for the purposes of this Part

Justification

- The current wording of the relevant article does not properly reflect the situation where co-operatives have financial subsidiaries in the form of a bank. In some countries a bank cannot be established in the form of a co-operative.

- Moreover, in some Member States the legislator gives credit institutions organized in the form of co-operatives an incentive to reorganize their operations within the legal form of a limited company.

- Some local co-operative banks used this provision to split their banking operations into a limited company. The remaining local cooperative is liable for all current and future obligations of the new credit institution.

- Therefore, we consider it necessary to modify Article 25(1) accordingly.

b. Preferential distributions

EACB suggested Amendment
to Amendment 26 of Draft Report Karas
Proposal for a Regulation
Article 26 – paragraph 1 –subparagraph h-point iii

Text proposed by the Commission	*Amendment*
(iii) the conditions governing the instruments do not include a cap or other restriction on the maximum level of distributions, except in the case of the instruments referred to in Article 25;	(iii) the conditions governing the instruments do not include a cap or other restriction on the maximum level of distributions, except in the case of the instruments referred to in Article 25; ***~~and a multiple~~ Higher or lower ~~of dividends~~ distributions paid on ordinary shares or instruments referred to in Article 25 do~~es~~ not constitute preferential distribution, a cap or other restrictions on the maximum level of distributions;***

Explanation

- The the current wording of the relevant article does not properly reflect the situation in all co-operative networks. In fact, cooperative laws in different Member States allow the use of different kinds of capital instruments.

- Instruments may differ in their voting rights. Instruments with lower voting rights are compensated by higher dividends. The right to higher dividends is typically based on the bylaws of an entity. In other jurisdictions instruments with multiple voting rights may receive lower dividends. Distributions to such instruments are subject to a decision of the bank's members and/or owners. The uneven rights to distributions apply only to distribution of distributable funds and do not create any preferential rights

- The EACB appreciates to a agreat extent Mr. Karas modification to Art. 26(1). However, the EACB considers it necessary to clarify the idea introduced by Mr. Karas in AM 26 slightly, because the word "multiple" seems to be misleading especially where no dividends are paid on ordinary shares, (please note that 2x0=0).

- Moreover, we consider it more suitable to speak of distributions then of dividends.

- The EACB therefore suggests modifying Mr. Karas AM 26 as above mentioned (please see underlined parts and parts striken through).

c. Different shares

EACB suggested Amendment (based on Council Compromise dd 9 Jan)
Proposal for a Regulation
Article 27 – paragraph 4

Text proposed by the Commission	*Amendment*
4. Where the capital instruments provide the owner with rights to the reserves of the institution in the event of insolvency or liquidation that are limited to the nominal value of the instruments, such a limitation shall apply to the same degree to the holders of all other Common Equity Tier 1 instruments issued by that institution	4. Where the capital instruments provide the owner with rights to the reserves of the institution in the event of insolvency or liquidation that are limited to the nominal value of the instruments, such a limitation shall apply to the same degree to the holders of all other Common Equity Tier 1 instruments issued by that institution. ***The condition laid down in the first sub-paragraph is without prejudice of the possibility for a mutual, cooperative society or a similar institution to recognize within CET1 capital instruments that do not afford voting rights to the holder and that meet both the following conditions:*** ***a) the claim of the holders of the non-voting instruments in the insolvency or liquidation of the institution is proportionate to the share of the total Common Equity Tier 1 instruments that those non-voting instruments represent;*** ***(b) the instruments otherwise qualify as a Common Equity Tier 1 instruments***

Justification

- The the current wording of the relevant article does not properly reflect the situation in all co-operative networks. In fact, cooperative laws in different Member States allow the use of different kinds of capital instruments.

- The CRR should take on board the following passage of the CEBS feedback document[1]: *"Whereby cooperative shares may co-exist with other capital instruments that may be entitled to different rights in liquidation, this is acceptable, provided that they fulfill loss absorbency criteria, especially they must be entitled to a claim on the residual assets that is proportional to their share of capital and not to a fixed claim for the nominal amount"*.

- The EACB suggests to take up the Amendment proposed by the Council in its Compromise Text of 9 January[2]

[1] http://www.eba.europa.eu/documents/Publications/Standards---Guidelines/2010/Guidelines_article57a/FS_Guidelines_article57a.aspx
[2] http://register.consilium.europa.eu/pdf/en/12/st05/st05104.en12.pdf

Deductions - Holdings within Co-operative Groups

EACB suggested Amendment
Proposal for a Regulation
Article 46-paragraph 3-subparagraph b

Text proposed by the Commission	*Amendment*
3. Competent authorities may permit institutions not to deduct a holding of an item referred to in points (h) and (i) of Article 33(1) in the following cases: (.....)	3. Competent authorities may permit institutions not to deduct a ***direct or indirect*** holding of an item referred to in points (h) and (i) of Article 33(1) in the following cases: (.....)
(b) where an institution referred to in Article 25 has a holding in another such institution, or in its central or regional credit institution, and the following conditions are met:	(b) where an institution referred to in Article 25 has a holding in another such institution, or in its central or regional credit institution, ***or in the parent company of its central or regional credit institution*** and the following conditions are met:
(i) where the holding is in a central or regional credit institution, the institution with that holding is associated with that central or regional credit institution in a network subject to legal ***or*** statutory provisions and the central or regional credit institution is responsible, under those provisions, for cash-clearing operations within that network;	(i) where the holding is in a central or regional credit institution, the institution with that holding is associated with that central or regional credit institution in a network subject to legal**,** ~~***or***~~ statutory ***or contractual*** provisions and the central or regional credit institution is responsible, under those provisions, for cash-clearing operations within that network;
(ii) the institutions fall within the same institutional protection scheme referred to in Article 108(7);	**(**ii) the institutions fall within the same institutional protection scheme referred to in Article 108(7);
(iii) the competent authorities have granted the permission referred to in Article 108(7);	(iii) the competent authorities have granted the permission referred to in Article 108(7);
(iv) the conditions laid down in Article 108(7) are satisfied;	(iv) the conditions laid down in Article 108(7) are satisfied;
(v) the institution draws up and reports to the competent authorities the consolidated balance sheet referred to in point (e) of Article 108(7) no less frequently than own funds requirements are required to be reported under Article 95	(v) the institution draw~~s~~ up and reports to the competent authorities the ~~***consolidated***~~ balance sheet referred to in point (e) of Article 108(7) ~~***no less frequently than own funds requirements are required to be reported under Article 95 of the***~~ ***institutions that adhere to the scheme on an annual basis.***

Justification

- The specific company structures of co-operative groups, in which many small banks own large institutions, such as a central institution, makes the treatment of holdings rather incomparable with other interbank-holdings, because the holdings in the central institutions follow the governance and model of the specific cooperative cooperation system. In particular, the central institution, typically a joint stock company, adheres to the same institutional protection scheme provides an infrastructure. Such scheme is essential for the proper functioning of the local banks. Article 46(3) should provide for a solution to not deduct “strategic holdings” in an Institutional Protection Scheme.

- Moreover, we think that this rule does not reflect the reality of all co-operative banking groups in Europe. In some countries, the a network is not subject to only legal or statutory provisions. Instead, the central institutions may perform cash-clearing operations based only on a legally-binding/contractual agreement. Moreover, the rules should be more open to consider countries, where more than one central institution provides services for co-operative banks
- In addition, since there are often intermediary holding companies which are not banking institution, the terminology of “company” should be used.
- We also think that the rule is too strict in some respects. In particular, we do not see the need for a consolidated balance sheet to reduce the choice of Art 108(7)(e) (aggregated or consolidated balance sheet), because Art 108(7) (e) also aims at avoiding double gearing within the group. Moreover it should be recognized that decentralized systems need an IPS which is not necessary for consolidated groups (cf. Art 46(2)).
- In order to clarify the legitimacy of that simplified consolidation for non-consolidating sectors, the word "consolidated" has to be deleted. A simplified method of consolidation is - amongst others - justified, as decentralized sectors fulfil an additional requirement (liability within the institutional protection scheme) which is not asked of consolidated groups.

Own Funds – Additional Tier 1 and Tier 2 capital

a. *Loss absorbency at point of non-viability – application to G-SIFIs only*

EACB suggested Amendment
Proposal for a Regulation
Recital 27

Text proposed by the Commission	*Amendment*
(27) In line with the decision of the BCBS, as endorsed by the GHOS on 10 January 2011, all Additional Tier 1 ***and Tier 2*** instruments of ***an*** institution should be fully and ***permanently*** written down or converted fully into Common Equity Tier 1 capital at the point of non-viability of the institution.	(27) In line with the decision of the BCBS, as endorsed by the GHOS on 10 January 2011, all Additional Tier 1 ~~***and Tier 2***~~ instruments of ~~***an***~~ ***a global systematically important financial*** institutions should be fully and ~~***permanently***~~ ***temporarily*** written down or converted fully into Common Equity Tier 1 capital at the point of non-viability of the institution.

Justification

- It seems that eligibility of instruments for both additional Tier 1 and Tier 2 instruments requires features allowing them to be permanently written down or converted into equity at the point of non-viability. However, there is no corresponding provision in the CRR I on the conversion or write-down of additional Tier 2. Therefore, the reference to Tier 2 in the recital should be deleted

- The requirements to ensure loss absorbency at the point of non-viability should not be applied to all banks but should be limited to global systematically important financial institutions (G-SIFIs)

- We support the aim to raise the quality of capital. However, we are concerned about the proposal that all Tier 1 instruments must have a clause allowing them to be written down permanently or converted into common equity upon the occurrence of a trigger event.

- Such requirements could seriously hamper the functioning of co-operative banks. The need to absorb losses “on a going concern basis” should be pursued with a temporary write-down of the nominal and with the additional provision of a write-up when the bank's capital ratios were to return above the trigger event.

b. Debt conversion and write down of Additional Tier 1- Temporary write down and write up

EACB suggested Amendment (based on Council Compromise dd 9 Jan)
Proposal for a Regulation
Article 49- paragraph 1-subparagraph n

Text proposed by the Commission	*Amendment*
1. Capital instruments shall qualify as Additional Tier 1 instruments only if the following conditions are met: (...) (n) the provisions governing the instruments require the principal amount of the instruments to be written down, or the instruments to be converted to Common Equity Tier 1 instruments, upon the occurrence of a trigger event; (...)	1. Capital instruments shall qualify as Additional Tier 1 instruments only if the following conditions are met: (...) (n) the provisions governing the instruments require the principal amount of the instruments to be written down ***on a permanent or temporary basis*** or the instruments to be converted to instruments to Common Equity Tier 1 instruments, upon the occurrence of a trigger event;

EACB suggested Amendment (based on Council Compromise dd 9 Jan)
Proposal for a Regulation
Article 49- paragraph 2 subparagraph b and c

Text proposed by the Commission	*Amendment*
2. EBA shall develop draft regulatory technical standards to specify all the following: (a) the form and nature of incentives to redeem; (b) the nature of the write down of the principal amount (c) the procedure and timing for the following (i) determining that a trigger event has occurred ***(ii) notifying the competent authority and the holders or the instrument that a trigger event has occurred and that the principal amount of the instrument will be written down or the instrument converted to a Common Equity Tier 1 instrument, as applicable, in accordance with the provisions governing the instrument;*** ***(iii)*** writing ***down the principal amount of the instrument, or converting it to a Common Equity Tier 1 instrument, as applicable***	2. EBA shall develop draft regulatory technical standards to specify all the following: (a) the form and nature of incentives to redeem; (b) the nature of the write down of the principal amount; ***the nature of any write up of the principal amount of an Additional Tier 1 instrument following a write down of its principal amount on a temporary basis.*** (c) the procedure and timing for the following (i) determining that a trigger event has occurred ***(ii) ~~notifying the competent authority and the holders or the instrument that a trigger event has occurred and that the principal amount of the instrument will be written down or the instrument converted to a Common Equity Tier 1 instrument, as applicable, in accordance with the provisions governing the instrument;~~*** (iii) writing ***up the principal amount of an additional Tier 1 instrument following a write down of its principal amount on a temporary basis. ~~down the principal amount of the instrument, or converting it to a Common Equity Tier 1 instrument, as applicable~~***

Justification

- While the members of the EACB support the aim to raise the quality of capital, they are concerned about the proposal that all Tier 1 instruments must have a clause allowing them to be written down permanently or converted into common equity upon the occurrence of a trigger event.

- In fact, such features could seriously hamper the functioning of co-operative banks. The need to absorb losses "on a going concern basis" can be pursued with a temporary write-down of the nominal and with the additional provision when the bank's capital ratios were to return above the trigger event.

- We therefore suggest allowing for a temporary write-down of instruments or a write-up and modify article 49(1) according to the Council Compromise Text of 9 January[3]

[3] http://register.consilium.europa.eu/pdf/en/12/st05/st05104.en12.pdf

Minority Interest

EACB suggested Amendment
Proposal for a Regulation
Article 79 –and Article 79 paragraph 2 new

Text proposed by the Commission	*Amendment*
Institutions shall determine the amount of minority interests of a subsidiary that is included in consolidated Common Equity Tier 1 capital by subtracting from the minority interests of that undertaking the result of multiplying the amount referred to in point (a) by the percentage referred to in point (b):	Institutions shall determine the amount of minority interests of a subsidiary that is included in consolidated Common Equity Tier 1 capital by subtracting from the minority interests of that undertaking the result of multiplying the amount referred to in point (a) by the percentage referred to in point (b):
(a) the Common Equity Tier 1 capital of the subsidiary minus the lower of the following:	(a) the Common Equity Tier 1 capital of the subsidiary minus the ***highest*** of the following:
(i) the amount of Common Equity Tier 1 capital of that subsidiary required to meet the sum of the requirement laid down in point (a) of Article 87(1) and the combined buffer referred to in Article 122(2) of Directive [inserted by OP];	(i) the amount of Common Equity Tier 1 capital of that subsidiary required to meet the sum of the requirement laid down in point (a) of Article 87(1**[…]),** the **[…]*****specific own funds requirements referred to in Article […]100 of Directive*** and the combined buffer referred to in Article 122(2) of Directive [inserted by OP]; ***and any additional local supervisory regulations in non EU Member States insofar as those requirements are to be met by Common Equity Tier 1 capital.***
(ii). the amount of consolidated Common Equity Tier 1 capital that relates to that subsidiary that is required on a consolidated basis to meet the sum of the requirement laid down in point (a) of Article 87(1) and the combined buffer referred to in Article 122(2) of Directive [inserted by OP];	(ii) the amount of consolidated Common Equity Tier 1 capital that relates to that subsidiary that is required on a consolidated basis to meet the sum of the requirement laid down in point (a) of Article 87(1)**,** ***the specific own funds requirements referred to in Article 100 of Directive*** and the combined buffer referred to in Article 122(2) of Directive [inserted by OP]; ***and any additional local supervisory regulations in non EU Member States insofar as those requirements are to be met by Common Equity Tier 1 capital;***
(b) the minority interests of the subsidiary expressed as a percentage of all Common Equity Tier 1 instruments of that undertaking plus the related retained earnings and share premium accounts.	(b) the minority interests of the subsidiary expressed as a percentage of all Common Equity Tier 1 instruments of that undertaking plus the related retained earnings and share premium accounts. ***new 2. The calculation referred to in paragraph 1 shall be undertaken on a sub-consolidated basis for each subsidiary referred to in Article 76(1).*** ***An institution may choose not to undertake this calculation for a subsidiary referred to in Article 76(1). Where an institution takes such a decision, the minority interest of that subsidiary may not be included in consolidated Common Equity Tier 1.***

Justification

- Calculation of own funds requirement has to take into account Pillar II requirements and specific requirements of EU Member State.
- Calculation of the own funds requirement has to take into account that local supervision outside EU Member States will require other levels of capitalisation than those stipulated in the CRR or CRD IV. Thus reference to Articles of this regulation alone will not be sufficient.
- Clarifications regarding the Minority deduction in multi-layer groups made by the BCBS since the Commission's proposal was drafted should be included to avoid double deduction of own funds instruments.
- The present wording of the CRR determines the own funds requirement to be deducted from the own funds of the subsidiary as the lower of the own funds requirement of the subsidiary on a stand alone [subpoint (i)] or on a consolidated basis [subpoint (ii)].
- With this article the flawed wording is adopted of paragraph 62 of the Basel III paper which only considers two tier group structures and mingles stand alone and consolidated own funds requirements. Meanwhile, the BCBS has given a correcting interpretation (question 6 on paras. 62-65 of the Basel III definition of own funds FAQs issued Oct 2011[4]). The interpretation basically allows to only deduct the own funds requirement on a consolidated basis in multi tear group structures. It thus actually changes the meaning of the original Basel III wording or requires an amended wording for multi tier group structures.
- The far more detailed wording of the CRR does not allow such correcting interpretation and thus leads to unintended consequences for minorities stakes held in certain subsidiaries:
- Some group members included in consolidation are not required to meet capital requirements on a stand alone basis. In such cases their consolidated own funds requirement will always be higher than their own funds requirement on a stand alone basis as there is none. If the lower of the own funds requirement on a stand alone or on a consolidated basis has to be deducted from consolidated own funds, the own funds requirement for such group member will always be calculated on the stand alone basis (as opposed to the correcting BCBS interpretation).

[4] http://www.bis.org/publ/bcbs204.pdf[5] http://register.consilium.europa.eu/pdf/en/12/st05/st05104.en12.pdf

RWA SME Loans

EACB suggested Amendment
Proposal for a Regulation
Article 118 - introductory part

Text proposed by the Commission	*Amendment*
Exposures that comply with the following criteria shall be assigned a risk weight of 75%	Exposures that comply with the following criteria shall be assigned a risk weight of 75% ***x 0.7619***

Justification

- The introduction of the capital conservation buffer involves an increase from 8% to 10.5% in the overall minimum capital requirements. This is a 31.25% increase in the current level. This increase of the overall capital requirement will imply that with the same amount of capital a bank can grant fewer loans. This may affect in particular those entities that very much rely on loans, especially SMEs.
- The members of the EACB therefore suggest introducing a multiplier (or balancing factor) in the transposition of Basel 3 to CRR I to be applied in the total RWA calculation for loans to SMEs. The balancing factor has to be applied for Standardized and IRB-approach.

Transitional arrangements

c. Basel I Floor

EACB suggested Amendment
Proposal for a Regulation
Recital 56

Text proposed by the Commission	*Amendment*
Directive 2006/48/EC required credit institutions to provide own funds that are at least equal to specified minimum amounts until 31 December 2011. In the light of the continuing effects of the financial crisis in the banking sector and the extension of the transitional arrangements for capital requirements adopted by the BCBS, it is appropriate to reintroduce a lower limit for a limited period of time until sufficient amounts of own funds have been established in accordance with the transitional arrangements for own funds provided for in this Regulation that will be progressively phased in from 2013 to 2019. For groups which include significant banking or investment business and insurance business, Directive 2002/87/EC on Financial Conglomerates, provides specific rules to address such 'double counting' of capital. Directive 2002/87/EC is based on internationally agreed principles for dealing with risk across sectors. This proposal strengthens the way these Financial Conglomerates rules shall apply to bank and investment firm groups, ensuring their robust and consistent application. Any further changes that are necessary will be addressed in the review of Directive 2002/87/EC, due in 2012	***deleted***

Justification

- It should not be required to calculate capital according to Basel I as it is no longer justified today: Basel II (and tomorrow Basel III) is more specific than Basel I, and has been applied for several years.
- The prolongation of the "floor" would penalize retail banking activities.
- Besides, the extension of the floor would result in a costly management constraint (double production of data). In fact, it seems also inappropriate to use a reference that is based on a calculation method, which is no more applied and whose underlying parameters have been changed significantly since.
- The EACB therefore suggests deleting Recital 56 and Article 476.

EACB suggested Amendment
Proposal for a Regulation
Article 476

Text proposed by the Commission	*Amendment*
1. Until 31 December 2015, institutions calculating risk-weighted exposure amounts in accordance with Part Three, Title II, Chapter 3 and institutions using the Advanced Measurement Approaches as specified in Part Three, Title III, Chapter 4 for the calculation of their own funds requirements for operational risk shall meet both of the following requirements: (a) They shall hold own funds as required by Part Three Title II Chapter 1; (b) They shall meet a temporary capital ratio of not less 6.4%. The temporary capital ratio is the own funds of the institution expressed as a percentage of the risk-adjusted assets and off-balance sheet items as set out in Annex IV. 2. The competent authorities may, after having consulted EBA, waive the application of paragraph 1(b) to institutions provided that all the requirements for the Internal Ratings Based Approach set out in Part Three, Title II, Chapter 3, Section 6 and the qualifying criteria for the use of the Advanced Measurement Approach set out in Part Three, Title III, Chapter 4 are met.	***deleted***

- *Justification*

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- It should not be required to calculate capital according to Basel I as it is no longer justified today: Basel II, and tomorrow Basel III, is more specific than Basel I, and has been applied for several years.
- The prolongation of the "floor" would penalize retail banking activities.
- Besides, the extension of the floor would result in a costly management constraint (double production of data). In fact, it seems also inappropriate to use a reference that is based on a calculation method, which is no more applied and whose underlying parameters have been changed significantly since.
- The EACB therefore suggests deleting Recital 56 and Article 476.

III. Large Exposures

EACB suggested Amendment

Eligible Capital for Large Exposure Regime

EACB suggested Amendment
Proposal for a Regulation
Article 4 –paragraph 23-subparagraph c

Text proposed by the Commission	*Amendment*
(23) 'eligible capital' for the purposes of Title IV of Part Two and Part Five means the sum of the following: (...) (c) Tier 2 capital ***that is equal to or less than 25% of own funds***	(23) 'eligible capital' for the purposes of Title IV of Part Two and Part Five means the sum of the following: (...) (c) Tier 2 capital ~~***that is equal to or less than 25% of own funds***~~

Justification

- The cap of 25% of Tier 2 in the calculation of eligible capital would place small and medium-sized institutions at a clear disadvantage since the relatively small amount of regulatory capital at their disposal means their large exposure limits would be quickly reached.
- Therefore, it is necessary to delete the cap of 25%.

V. Liquidity

EACB suggested Amendments

Definition Highly Liquid Assets

a. Definition of Highly Liquid Assets

EACB suggested Amendment
Proposal for a Regulation
Article 404

Text proposed by the European Commission	*EACB Suggestion for wording*
1. Institutions shall report the following as liquid assets ***unless excluded by paragraph 2 and only if the liquid assets fulfil the conditions in paragraph 3:***	1. Institutions shall report the following as liquid assets ~~***unless excluded by paragraph 2 and only if the liquid assets fulfil the conditions in paragraph 3***~~**:**
(a) cash and deposits held with central banks ***to the extent that these deposits can be withdrawn in times of stress;***	(a) cash and deposits held with central banks ~~***to the extent that these deposits can be withdrawn in times of stress;***~~
(b) transferable assets that are of ***extremely*** high liquidity ***and credit quality***;	(b) transferable assets that are of ~~***extremely***~~ high liquidity ~~***and credit quality***~~;
(c) transferable assets representing claims on or guaranteed by the central government of a Member State or a third country ***if the institution incurs a liquidity risk in that Member State or third country that it covers by holding those liquid assets;***	(c) transferable assets representing claims on or guaranteed by the central government of a Member State or a third country ~~***if the institution incurs a liquidity risk in that Member State or third country that***~~
(d) transferable assets that are of high ***liquidity*** and credit quality.	(d) transferable assets that are of high ~~***liquidity and***~~ credit quality ***that meet at least the quality criteria set by central banks for monetary policies***.
Pending a uniform definition in accordance with Article 481(2) of ***high and extremely*** high liquidity and credit quality, institutions shall identify themselves in a given currency transferable assets that are respectively of ***high or extremely*** high liquidity and credit quality. Pending a uniform definition, competent authorities may, taking into account the criteria listed in Article 481(2), provide general guidance that institutions shall follow in identifying assets of ***high and extremely*** high liquidity and credit quality. In the absence of such guidance, institutions shall use transparent and objective criteria to this end, including some or all of the criteria listed in Article 481(2).	Pending a uniform definition in accordance with Article 481(2) of ~~***high and extremely***~~ high liquidity and ***of high*** credit quality, institutions shall identify themselves in a given currency transferable assets that are respectively of ~~***high or extremely***~~ high liquidity and ***of high*** credit quality. Pending a uniform definition, competent authorities may, taking into account the criteria listed in Article 481(2), provide general guidance that institutions shall follow in identifying assets of ~~***high and extremely***~~ high liquidity and ***of high*** credit quality. In the absence of such guidance, institutions shall use transparent and objective criteria to this end, including some or all of the criteria listed in Article 481(2).
2. The following shall not be considered liquid assets:	2. The following shall not be considered ***high*** liquid assets:
a) assets that are issued by a credit institution unless they fulfil one of the following conditions:	(a) assets that are issued by a credit institution unless they fulfil one of the following conditions:
(i) they are bonds eligible for the treatment set out in Article 124(3) or (4);	(i) they are bonds eligible for the treatment set out in Article 124(3) or (4);
(ii) they are bonds as defined in Article 52(4) of Directive 2009/65/EC other than those referred to in (i);	(ii) they are bonds as defined in Article 52(4) of Directive 2009/65/EC other than those referred to in (i), ***especially bonds backed by loans and exposures to small or medium sized enterprises; or equivalent***

	items subject to the approval of the competent authorities;
	(iia)they are bonds eligible for the treatment set out in Article 124 (3) or (4) or asset backed instruments of high liquid and credit quality as established by EBA pursuant to Article 481 (1) and which are subject to supervision and fulfill the requirements [as set forth in Article 174b (2),(5),(6),(7) and (8) of the Solvency II draft implementing measures;
(iii) the credit institution has been set up and is sponsored by a Member State central or regional government and the asset is guaranteed by that government and used to fund promotional loans granted on a non-competitive, not for profit basis in order to promote its public policy objectives;	(iii) the credit institution has been set up and is sponsored by a Member State central or regional government and the asset is guaranteed by that government and used to fund promotional loans granted on a non-competitive, not for profit basis in order to promote its public policy objectives;
	(iv) the issuer of transferable assets and the investing institution are both part of the same institutional protection scheme referred to in 108(7)(b), provided that they meet all the conditions laid down in Article 108(7).
(b) assets issued by any of the following:	(b) assets issued by any of the following:
(i) an investment firm;	(i) an investment firm;
(ii) ***an insurance undertaking;***	~~***(ii)an insurance undertaking;***~~
(iii) a financial holding company;	~~***(iii)***~~ ***(ii)*** a financial holding company;
(iv) a mixed-activity holding companies;	~~***(iv)***~~ ***(iii)*** a mixed-activity holding companies;
(v) any other entity that performs one or more of the activities listed in Annex I of Directive [inserted by OP] as its main business.	~~***(v)***~~ ***(iv)*** any other entity that performs one or more of the activities listed in Annex I of Directive [inserted by OP] as its main business.
	(v) special purpose entities, unless they are bonds eligible for the treatment set out in Article 124 (3) or (4) or asset backed instruments of high liquid and credit quality as established by EBA pursuant to Article 481 (1)
3. Institutions shall only report as liquid assets that fulfil ***each*** of the following conditions:	3. Institutions shall only report as ***highly*** liquid assets that fulfil ~~***each***~~ ***one*** of the following conditions:
(a) they are not issued by the institution itself or its parent or subsidiary institutions or another subsidiary of its parent institutions or parent financial holding company;	(a) they are not issued by the institution itself or its parent or subsidiary institutions or another subsidiary of its parent institutions or parent financial holding company;
(b) they are eligible collateral in normal times for intraday liquidity needs and overnight liquidity facilities of a central bank ***in*** a Member State or ***if the liquid assets are held to meet liquidity outflows in the currency*** of a third country, ***of the central bank of that third country;***	(b) ***ideally*** they are eligible collateral in normal times for intraday liquidity needs and overnight liquidity facilities of a central bank ~~***in***~~ ***of*** a Member State or ~~***if the liquid assets are held to meet liquidity outflows in the currency***~~ of a third country, ~~***of the central bank of that third country;***~~
(c) their price can be determined by a formula that is easy to calculate based on publicly available inputs and does not depend on strong assumptions	(c) their price can be determined by a formula that is easy to calculate based on publicly available inputs and does not depend on strong assumptions

as is typically the case for structured or exotic products;	as is typically the case for structured or exotic products;
(d) they are listed on a recognised exchange;	(d) ***ideally*** they are listed on a recognised exchange;
(e) they are tradable on active outright sale or repurchase agreement markets with a large and diverse number of market participants, a high trading volume, and market breadth and depth.	(e) they are tradable on active outright sale or repurchase agreement markets with a large and diverse number of market participants, a high trading volume, and market breadth and depth.
The condition in point (b) shall not apply in case of liquid assets held to meet liquidity outflows in a currency in which there is an extremely narrow definition of central bank eligibility. In case of currencies of third countries, this exception shall apply and only apply if the competent authorities of the third country apply the same exception and the third country has comparable reporting requirements in place.	***deleted***
4.EBA shall develop draft implementing technical standards listing the currencies which meet the conditions referred to in the paragraph 3. ***EBA shall submit those draft technical standards to the Commission by 1 January 2013.*** ***Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1093/2010.*** ***Before the entry into force of the technical standards referred to in the previous subparagraph, institutions may continue to apply the treatment set out in the first subparagraph, where the competent authorities have applied that treatment before 1 January 2013.***	***deleted***
5. Shares or units in CIUs may be treated as liquid assets ***up to an absolute amount of 250 million EUR*** provided that the requirements in Article 127(3) are met and that the CIU, apart from derivatives to mitigate ***interest rate or credit risk***, only invests in liquid assets.	5. Shares or units in CIUs may be treated as liquid assets ~~***up to an absolute amount of 250 million EUR***~~ provided that the requirements in Article 127(3) are met and that the CIU, apart from derivatives to mitigate ~~***interest rate or credit risk***~~ ***risk or permitted investments***, only invests in liquid assets. ***Monetary UCITS meeting generally approved standards by ESMA shall be considered as highly liquid assets***.

Justification

- The ongoing crisis clearly shows that even sovereign bonds can quickly lose their 'market-liquidity'. This calls for not building a liquidity regulation too much on sovereign instruments as "highly liquid".
- It is required to rely not only on market liquidity but also on other mechanisms underlying the credit quality of the assets concerned. This is necessary as market liquidity proves to be too pro-cyclical and volatile. In addition, it is deemed necessary because assets which are liquid

on the market are not always those which are of the best quality. Furthermore, the development of capital market is varying from one jurisdiction to another. Reliance solely on market liquidity would create an uneven playing field between jurisdictions.

- Therefore, the definition of highly liquid assets should be broadened and we should divide assets into two categories:

  Assets which benefit from market liquidity:There is no reason for this category to be subject to a compulsory central bank eligibility criterion. Shares or UCITS for example should be integrated in that category with appropriate haircuts

  Assets which are of good credit quality:If the market liquidity completely disappears, at least what is left is of good quality and can still be used as collateral. That is what central banks recognize with their minimum criteria to central bank refinancing. Moreover, this criterion allows the level playing field between jurisdictions.

- The CRR honours the merits of institutional protection schemes (IPS) according to Art. 108(7)). Those schemes guarantee the solvency as well as the liquidity of their member institutions. During the recent and previous crises IPS have proven to function effectively. There has never been a liquidity shortage for cooperative banks as the IPS supports the liquidity management within the network of banks belonging to that same scheme. Consequently, financial instruments, such as bearer bonds, that are issued within recognized IPS, ought to be included in Art. 404(2). Otherwise, strong incentives would be created for local banks to withdraw liquidity from the scheme which would ultimately lead to less financial stability. A recognition of marketable securities issued within an institutional protection scheme should follow similar conditions as those outlined in Article 46(3) regarding own funds.

- Prime residential Mortgage backed securities (RMBS) should be recognised as a eligible liquid assets. The predominance of either covered bonds or RMBS as the primary source of asset backed funding in a country is largely based on historical events and the legislative framework that resulted. As a consequence, countries where RMBS is the primary source of asset backed funding will have a disadvantage in comparison to countries where covered bonds are the primary source. If the liquidity proposals are not changed, an unlevel playing field will be created between ‘covered bond countries’ and ‘RMBS countries’. Market distortions will occur, as there will be a premium on LCR eligible assets, even though the underlying assets of other instruments might be similar or of better quality. Allowing the usage of prime RMBS to satisfy the LCR requirements will diversify LCR buffer compositions, reducing systemic risk.

- Art. 404(5) Due to the fact that the scope of eligible assets, which could be qualified as liquid assets, needs to be expanded in terms of a financial institutions' loss-bearing capacity, also the range of respective instruments which aim at mitigating certain risks being linked to these assets, needs to be adjusted. Therefore an alignment in terms of Art. 404 (5) is necessary.It is necessary to recognise central bank eligibility and market liquidity of the assets which are not central bank eligible criterion sufficient to be highly liquid assets

b. Appropriate Diversification

EACB suggested Amendment
Proposal for a Regulation
Article 405, paragraph b

Text proposed by the Commission	*Amendment*
The institution shall only report as liquid assets those ***holdings of liquid assets*** that meet the following conditions: (a) they are appropriately diversified; ***(b) not less than 60% of the liquid assets that the institution reports are assets referred to under points (a) to (c) of Article 404(1). Such assets owed and due or callable within 30 calendar days shall not count towards the 60% unless the assets have been obtained against collateral that also qualifies under points (a) to (c) of Article 404(1);***	The institution shall only report as ***high*** liquid assets those ~~***holdings of liquid assets***~~ that meet the following conditions: (a) they are appropriately diversified; ***deleted***

Justification

- Diversification of liquid assets cannot represent a compulsory requirement, especially in the case of smaller banks. Rather than requiring a rough diversification criterion, which favors sovereign bonds, diversification should be more adapted to market situations. Moreover, availability for the treasury function would be a more credible benchmark than the use for banking transactions.

c. ***Availability of the assets***

EACB suggested Amendment
Proposal for a Regulation
Article 405, paragraph f

Text proposed by the Commission	*Amendment*
(f) price risks associated with the assets may be hedged but the liquid assets are subject to appropriate internal arrangements that ensure that they ***will not be used in other ongoing operations, including:***	(f) price risks associated with the assets may be hedged but the liquid assets are subject to appropriate internal arrangements that ensure that they ***are readily available to the treasury function when needed*** ~~***will not be used in other ongoing operations, including:***~~
(i) hedging or other trading strategies;	~~***(i) hedging or other trading strategies;***~~
(ii) providing credit enhancements in structured transactions;	~~***(ii) providing credit enhancements in structured transactions;***~~
(iii) to cover operational costs	~~***(iii) to cover operational costs***~~

Justification

- It should be laid down that the liquidity assets are readily available to the liquidity management function in case of a crisis

Treatment of co-operative groups

a. Application of consolidated approach

EACB suggested Amendment
Proposal for a Regulation
Article 7, paragraph 2, subparagrap 3 (new)

Text proposed by the Commission	*Amendment*
	(new) Competent authorities may also apply paragraph 1 to institutions associated in a network and where in accordance with legal or statutory provisions a central or regional credit institution is responsible, under those provisions, for cash-clearing operations within the network, as mentioned in Article 389(2)(d) and where the central institution manages deposits and other funds from the members of the network, provided that the intra-network co-operation covers also liquidity.

Justification

- It is necessary to allow the application of liquidity requirement on a consolidated basis to institutions which have an Institutional Protection Scheme but do not meet requirements of Article 108(7).
- The enlargement of a liquidity consolidated approach to groups which meet the conditions of Article 389(2)(d) is suggested.

b. consolidated approach to liquidity in IPS

EACB suggested Amendment
Proposal for a Regulation
Article 7, paragraph 2, subparagrap 3

Text proposed by the Commission	*Amendment*
Competent authorities may also ***apply paragraph 1 also to institutions which*** that are members of the same institutional protection scheme referred to in 108(7)(b), provided that they meet all the conditions laid down in Article 108(7). Competent authorities shall in that case determine one of the institutions subject to the waiver to meet Article 401on the basis of the consolidated situation of all institutions of the single liquidity sub-group	Competent authorities may also ~~***apply paragraph 1 also to institutions which***~~ ***waive in full or in part the application of Article 401 to institutions which*** are members of the same institutional protection scheme referred to in 108(7)(b), provided that they meet all the conditions laid down in Article 108(**7**) ***and supervise them as a single liquidity sub-group.*** Competent authorities shall in that case determine one of the institutions subject to the waiver to meet Article 401 on the basis of the consolidated situation of all institutions of the single liquidity sub-group.

Justification

- A consolidated approach to liquidity in Institutional Protection Schemes should not imply duplication of requirements and interferences in the rules of Institutional Protection Schemes.
- Indeed Article 7 (2) makes reference to Article 7 (1) with several conditions difficult to meet.
- In order to better consider the co-operative groups, we propose to delete the stringent conditions of Article 7 (1) mentioned in Article 7 (2).

c. Inflows and outflows in IPS

EACB suggested Amendment
Proposal for a Regulation
Article 410, paragraph 8

Text proposed by the Commission	*Amendment*
By derogation from paragraph 7, competent authorities may grant the permission to apply a lower percentage on a case-by-case basis when where all of the following conditions are fulfilled:	***In order to minimise the conflict of interests within a group or network of institutions*** by derogation from paragraph 7, competent authorities may grant the permission to apply a lower percentage on a case-by-case basis when where all of the following conditions are fulfilled:
(a) the depositor is a parent or subsidiary institution of the institution or another subsidiary of the same parent institution or linked to the institution by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;	(a) the depositor is ***one of the following:*** (i) a parent or subsidiary institution of the institution; or (ii) another subsidiary of the same parent institution or (iii) linked to the institution by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC ***(iv) member of an institutional protection scheme compliant with Article 108 (7)*** ***(v) the central institution or member in a network compliant with Article 389 (2) d);***
(b) there are reasons to expect a lower outflow over the next 30 days even under combined idiosyncratic and market-wide stress scenario;	(b) there are reasons to expect a lower outflow over the next 30 days even under combined idiosyncratic and market-wide stress scenario;
(c) a corresponding symmetric or more conservative inflow is applied by the depositor by derogation from Article 413;	(c) a corresponding symmetric or more conservative inflow is applied by the depositor by derogation from Article 413, ***in order to reflect a neutral position of the joint positions;***

Justification

- The competent authorities should have the discretion to allow lower outflow on a case by case basis, also to co-operative networks as in the AM of the Article 410(8). The recognition of lower outflow percentages at national discretion on a case by case basis should be extended to the institutional protection schemes and the networks under the meaning of Article 389 (2) (d).
- As stated below for the liquidity outflows, we propose to establish a symmetrical treatment by modifying Article 413(4). Therefore the recognition of higher inflow percentages at national discretion on a case by case basis should be extended to the institutional protection schemes and the networks under the meaning of Article 389 (2) d) and to the other networks meeting the requirements of Article 108 (7).

EACB suggested Amendment (based on Council compromise dd 9jan)
Proposal for a Regulation
Article 413 –paragraph 4

Text proposed by the Commission	*Amendment*
Competent authorities may grant the permission to apply, by derogation from paragraph 2 point c), a higher inflow on a case by case basis ***for credit, and liquidity facilities*** when all of the following conditions are fulfilled:	Competent authorities may grant the permission to apply, by derogation from paragraph 2 point c), a higher inflow on a case by case basis ~~***for credit, and liquidity facilities***~~ when all of the following conditions are fulfilled:
(a) there are reasons to expect a higher inflow even under idiosyncratic stress;	(a) there are reasons to expect a higher inflow even under ***a combined market and*** idiosyncratic stress ***of the provider*****;**
(b) the ***provider*** is a parent or subsidiary institution of the institution or another subsidiary of the same parent institution or linked to the institution by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;	(b) the ~~***provider***~~ ***counterparty*** is a parent or subsidiary institution of the institution or another subsidiary of the same parent institution or linked to the institution by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC ***or a member of the same institutional protection scheme referred to in Article 108(7);*** ***(ba) a corresponding symmetric or more conservative outflow is applied by the counterparty by derogation from Article 413;***
(c)the institution and the ***provider*** shall be established in the same Member State unless Article 18(1)(b) applies.	(c) the institution and the ~~***provider***~~ ***counterparty*** shall be established in the same Member State**[…]**.
Where such higher inflow is permitted to be applied, the competent authorities shall inform EBA about the decision and its reasons.	Where such higher inflow is permitted to be applied, the competent authorities shall inform EBA about the decision and its reasons.
The conditions for such higher inflows shall be regularly reviewed by the competent authorities.	***[…]Fulfilment of the*** conditions for such higher inflows shall be regularly reviewed by the competent authorities.

Justification

- The competent authorities should have the discretion to allow lower outflow on a case by case basis, also to co-operative networks as in the AM of the Article 410(8). The recognition of lower outflow percentages at national discretion on a case by case basis should be extended to the institutional protection schemes and the networks under the meaning of Article 389 (2) (d).
- As stated below for the liquidity outflows, we propose to establish a symmetrical treatment by modifying Article 413(4). Therefore the recognition of higher inflow percentages at national discretion on a case by case basis should be extended to the institutional protection schemes and the networks under the meaning of Article 389 (2) d) and to the other networks meeting the requirements of Article 108 (7).
- The EACB suggests to take up the Amendment proposed by the Council in its Compromise Text of 9 January[5]

[5] http://register.consilium.europa.eu/pdf/en/12/st05/st05104.en12.pdf

d. Inflows from operational deposits

EACB suggested Amendment
Proposal for a Regulation
Article 413 paragraph 2-subparagraph c

Text proposed by the Commission	*Amendment*
(c) monies due that the institution owing those monies treats according to Article 410(4), ***a***ny undrawn credit or liquidity facilities and any other commitments received shall not be taken into account	(c) monies due that the institution owing those monies treats according to Article 410(4) ***shall be reduced by 75%. A***ny undrawn credit or liquidity facilities and any other commitments received shall not be taken into account.

Justification

- The situation reflected in Article 410(4) would have as a consequence that an institution may prefer to place deposits in a bank outside the liquidity group since when those deposits were placed in the group, 0% would be available as inflows for the institution.
- Thus, 25 % of money would be lost This seems inappropriate, since the purpose of liquidity is to ensure and keep the liquidity and not to lose it.

e. 75% cap on inflows

EACB suggested Amendment
Proposal for a Regulation
Article 413 paragraph 1

Text proposed by the Commission	*Amendment*
Institutions shall report their capped liquidity inflows. ***Capped liquidity inflows shall be the liquidity inflows limited to 75% of liquidity outflows***. Institutions may exempt liquidity inflows from deposits placed with other institutions and qualifying for the treatments set out in Article 108(6) or Article 108(7) from this limit.	Institutions shall report their ~~***capped***~~ liquidity inflows. ~~***Capped liquidity inflows shall be the liquidity inflows limited to 75% of liquidity outflows.***~~ Institutions may exempt liquidity inflows from deposits placed with other institutions ***as well as inflows from loans and off balance sheet commitments*** and qualifying for the treatments set out in Article 108(6),Article 108(7) ***or Article 389 (2) d)***from this limit

Justification

- The 75% cap on inflows obliges banks to acquire an amount of highly liquid assets that goes beyond the necessary to meet the criteria of LCR.
- As this cap would be very costly for co-operative banks and it would seriously limit their capacity to provide loans.
- Moreover, all internal flows should be allowed to be excluded from the cap on the inflows, including the loans and off balance sheet commitments.
- Therefore, its is suggested to delete the cap of 75%.

Minimum Reserves

EACB suggested Amendment
Proposal for a Regulation
Article 404, paragraph 1, subparagrap a

Text proposed by the Commission	*Amendment*
1. Institutions shall report the following as liquid assets unless excluded by paragraph 2 and only if the liquid assets fulfil the conditions in paragraph 3: (a) cash and deposits held with central banks ***to the extent that these deposits can be withdrawn in times of stress;***	1. Institutions shall report the following as liquid assets unless excluded by paragraph 2 and only if the liquid assets fulfil the conditions in paragraph 3: (a) cash and deposits held with central banks ~~***to the extent that these deposits can be withdrawn in times of stress***~~;

Justification

- The EACB would appreciate if all deposits at Central Banks should be considered highly liquid assets, including the mandatory reserves.
- Some banks that fulfill their minimum reserve requirements indirectly through their central institutions. In this case the central institutions are simply an intermediary between the European Central Bank or other Central Bank and the local co-operative banks, thus the central institution does not have a liquidity inflow nor reserves as far as the LCR framework is concerned, since the deposits are finally held by the European Central Bank.
- It is suggested to neutralize the inflows in/outflows out of the central institution regarding
- these funds, so that they do not give rise to any additional liquidity requirement.

EACB suggested Amendment
Proposal for a Regulation
Article 410, paragraph 9 new

Text proposed by the Commission	*Amendment*
	(new) Institutions shall not report as outflow liabilities resulting from deposits by other institutions if they correspond to minimum reserves required by the ECB or by the central bank of a Member State.

Justification

- The EACB would appreciate if all deposits at Central Banks should be considered highly liquid assets, including the mandatory reserves.
- Some banks that fulfill their minimum reserve requirements indirectly through their central institutions. In this case the central institutions are simply an intermediary between the European Central Bank or other Central Bank and the local co-operative banks, thus the central institution does not have a liquidity inflow nor reserves as far as the LCR framework is concerned, since the deposits are finally held by the European Central Bank.
- It is suggested to neutralize the inflows in/outflows out of the central institution regarding these funds, so that they do not give rise to any additional liquidity requirement.

EACB suggested Amendment
Proposal for a Regulation
Article 413, paragraph 8 new

Text proposed by the Commission	*Amendment*
	(new) Institutions shall not report as inflow assets resulting from deposits in other institutions if they correspond to minimum reserves required by the ECB or by the central bank of a Member State.

Justification

- The EACB would appreciate if all deposits at Central Banks should be considered highly liquid assets, including the mandatory reserves.
- Some banks that fulfill their minimum reserve requirements indirectly through their central institutions. In this case the central institutions are simply an intermediary between the European Central Bank or other Central Bank and the local co-operative banks, thus the central institution does not have a liquidity inflow nor reserves as far as the LCR framework is concerned, since the deposits are finally held by the European Central Bank.
- It is suggested to neutralize the inflows in/outflows out of the central institution regarding these funds, so that they do not give rise to any additional liquidity requirement.

Corporate Run-off rate

EACB suggested Amendment
Proposal for a Regulation
Article 410, paragraph 5

Text proposed by the Commission	*Amendment*
Institutions shall multiply liabilities resulting from deposits by clients that are not financial customers by ***75%*** to the extent they do not fall under paragraph 4	Institutions shall multiply liabilities resulting from deposits by clients that are not financial customers by ~~75%~~ ***50%*** to the extent they do not fall under paragraph 4

Justification

- We are deeply concerned that the 75% run-off rate that is applied to corporate and other non-financial institutions deposits, as it is stated in the Art. 410(5), is extremely punitive to the European industry.
- We suggest a 50% run-off factor which is more consistent with actual experience.

Recognition of Deposits as inflows

EACB suggested Amendment
Proposal for a Regulation
Article 413, paragraph 4

Text proposed by the Commission	*Amendment*
Competent authorities may grant the permission to apply, by derogation from paragraph 2 point c), a higher inflow on a case by case basis for credit, and liquidity facilities when all of the following conditions are fulfilled:	Competent authorities may grant the permission to apply, by derogation from paragraph 2 point c), a higher inflow on a case by case basis for ***deposits***, credit and liquidity facilities when all of the following conditions are fulfilled

Justification

- It seems overly restrictive not include deposits in the recognition of higher inflow percentages, according to Article 413(4).
- The supervisory discretion regarding higher inflows should be enlarged on a case by case basis for deposits.

V. Corporate Governance

EACB suggested Amendments

Extension of exemption one mandate in groups

EACB suggested Amendment
Proposal for a Directive
Article 87 –paragraph 1-subparagraph a –second sentence

Text proposed by the Commission	*Amendment*
Executive or non-executive directorships held within the same group shall count as one single directorship.	Executive or non-executive directorships held (i) within the same group ***or (ii) are members of the same institutional protection scheme if the conditions of Article 108 paragraph 7 are fulfilled; (iia)(new) have established links according to Art. 108 paragraph 6 or (iii) within undertakings (including non-financial institutions) where the institutions owns a qualifying holding*** shall count as one single directorship. ***For paragraph a subparagraph (iii) this includes:*** ***(i) undertakings and non financial entities*** ***a) in which there is a qualified holding according to Art. 4(21) of Regulation [inserted by OP],*** ***b) in which there are participations according to Art. 4(49) of Regulation [inserted by OP] or*** ***c) which have close ties as according to Art. 4(72) of Regulation [inserted by OP] to certain non-financial institutions.*** ***(ii) parent financial holding company according to Art. 4(65)(66) and (67) controlling a central or regional credit institution adhering to an IPS scheme.***

Justification

- There are institutions which have established links according to Art. 108(7) which excludes the parent undertakings of the institutions and any other subsidiaries which are however subject to supervision on a consolidated basis. In addition, there are co-operative groups on a consolidated basis which are non categorised as IPS but linked by relations under Art.108(6). Therefore, we suggest widening the notion of group to also take account of these situations.
- It should also be broadened for situations where the credit institution may own a qualified holding but that company is not part of the credit institution (holdings in non-financial institutions).
- These holdings are part of the institution's common services e.g. central banks, data processing etc. The link is not lesser in these cases than in the case of mother daughter relationship. We think the same rationale for the exemption should be applied to these companies within the group and it is necessary to make the relevant cross-reference to indicate the links between these holdings and institution
- Therefore, we suggest widening the notion of group based on the Council Compromise Text of 9 January6 to also take account of these situations

[6] http://register.consilium.europa.eu/pdf/en/12/st05/st05104.en12.pdf

Overview of EACB suggestions for AM regarding Draft Report Mr. Karas CRR and CRD IV

EACB Views	AMs Draft Karas Report Supported by EACB	AM Draft Karas Report which require modification	AM Draft Karas Report NOT supported by EACB	EACB Suggestions for new Amendments
General	AM 10 to Regulation Recital 89 Proportionality Principle AM 11 to Regulation Recital 90a(new): Art. EBA and Commission Mandates			
Capital Issues	AM 6 to Regulation Recital 56a(new): Art. Exceptional and temporary buffer AM 12 to Regulation Art. 4(46)(a): Art. Connected Clients AM 21 to Regulation Art. Art.25(1)(b) Clarification Art 25 Capital instruments of Cooperative in CET 1 AMs 22,23 and 24 to Regulation Art. 25(2)(1): EBA Mandate Capital instruments of Cooperative in CET 1 "weakened as a going concern" AM 25 to Regulation Art. 25(2)(2):	**AM 26 to Regulation Art. 26(1)(h)(iii):** CET 1 Instruments/Preferential distribution **AMs 38-39 to Regulation Art. 79(1)(a):** Minority Interests in consolidated CET 1 Capital **AM 40 to Regulation Art. 79(1a) new:** Scope of application Minority Interests **AMs 41-42 to Regulation Art. 80(1)(a):** Minority Interests qualifying Tier 1 included in consolidated Tier1 Capital **AMs 43-44-45 to Regulation Art. 82(1)(a):**	AM 52 to Regulation Art. 139(2)(1): EBA Mandate on IRB Approach	**EACB Suggestion to Regulation Art. 27(1):** Clarification Art 27 Capital instruments of Cooperative in CET 1 **EACB Suggestion to Regulation Art. 27(4)** Different shares CCI/CCA **EACB Suggestion to Regulation Art. 25(1)(a)** Capital Instruments of cooperative in CET 1 / Subsidiaries of cooperative organisations **EACB Suggestion to Regulation Recital 27** Loss absorbency point of non-viability to G-SIFIs **EACB Suggestion to Regulation Art. 46(3)(b)**

	Deadline EBA Mandate Capital instruments of Cooperative in CET 1 AM 28 to Regulation Art. 28a(new): Capital instruments Crisis situation / state aid AM 33 to Regulation Art. 46(5): EBA Mandate Exemptions from Deduction where consolidation is applied AM 55 to Regulation Art. 149(1)(iii) line 2: Balancing Factor under IRB Approach AM 75 to Regulation Art. 389(2)(c): Exposure limits consolidated approach AM 124 to Regulation Art. 463(1): Cut-off date	Minority Interests qualifying own funds included in consolidated own funds		Deductions – holdings within co-operative groups **EACB Suggestion to Regulation Art. 49(1)(bn** Temporary write-down and write up **EACB Suggestion to Regulation Art. 49(2)(b)(c)** Temporary write-down and write up **EACB Suggestion to Regulation Art. 79(1)(a)** Minority Interests **EACB Suggestion to Regulation Art. 80(1)(a)** Minority Interests "highest rather than the lower" **EACB Suggestion to Regulation Art. 82(1)(a)** Minority Interests "highest rather than the lower" **EACB Suggestion to Regulation Art.118(a)(new)** SME Balancing Factor under Standardized Approach **EACB Suggestion to Regulation Recital 56** Deletion Basel I Floor **EACB Suggestion to Regulation Art. 476** Deletion Basel I Floor

Large exposures	AM 127 to Regulation Art. 471(1a) (new): Transitional provisions for large exposures			**EACB Suggestion to Regulation Art.** 4(23)(c) Eligible capital for large exposure regime
Leverage Ratio	AM 96 and 139 to Regulation Art. 436(1) and Art. 487(2): Leverage ratio			
Liquidity Issues	AM 18 to Regulation Art. 7(2)(3): Consolidated treatment extend to Article 12 AM 80 to Regulation Art. 404(5): Cap on CIUs reporting on liquid assets AM 85 to Regulation Art. 410(4): Definition of "established relationship" outflows on liabilities		AM 14 to Regulation Art. 7(1)(b): Consolidated treatment extension to "branches" AM 90 to Regulation Art. 413(4): Supervisory discretion higher inflows	**EACB Suggestion to Regulation Art. 404(3)** Definition of HLA **EACB Suggestion to Regulation Art**. 7(2)(3) new Consolidated treatment - Art. 389(2)(d) **EACB Suggestion to Regulation Art. 7(2)(3)** Consolidated treatment in IPS **EACB Suggestion to Regulation Art.** 410(8) Extension Supervisory Discretion inflows and outflows to IPS and Art. 389(2)(d) **EACB Suggestion to Regulation Art.** 413(4) Extension Supervisory Discretion inflows and outflows to IPS and Art. 389 (2) d) **EACB Suggestion to Regulation Art 413(2)(c)** Inflows from operational deposits

				EACB Suggestion to Regulation Art. 413(1) 75% cap on inflows **EACB Suggestion to Regulation Art.** 404(3) Definition of HLA **EACB Suggestion to Regulation Art. 404(1)(a)** Minimum Reserves held with co-operative central banks **EACB Suggestion to Regulation Art. 410(9)new** Minimum Reserves held with co-operative central banks **EACB Suggestion to Regulation Art. 413(8)new** Minimum Reserves held with co-operative central banks **EACB Suggestion to Regulation Art. 413(4)** Deposits as inflows
Corporate Governance	AM2 to Directive Recital 44a(new): Governance structures- 'management body' AM 3 to Directive Recital 63: General/Proportionality Principle		AM 10 to Directive Art. 86(2)(2)(a): Tasks of Nomination Committee vis-a-vis management body AMs 11, 12, 13 to Directive Art. 86(2)(2)(b)-(d): Tasks of Nomination Committee vis-a-vis management body	**EACB Suggestion to Directive Art. 87(1)(a) subpara. 4**: Extension of exemption one mandate to non-consolidated groups common services/ qualified holdings