European Association of Co-operative Banks
Groupement Européen des Banques Coopératives
Europäische Vereinigung der Genossenschaftsbanken

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EACB COMMENTS ON

Proposal for a regulation on prudential requirements for credit institutions (COM (2011) 452) CAPITAL

The voice of 4.200 local and retail banks, 50 million members, 160 million customers

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I. Introductory Remark

The members of the EACB acknowledge the importance of the revised Basel capital framework for enhancing the stability of banks and financial markets all around the world.

Nevertheless, regulators have to be aware that the new Basel framework implies a significant change of European banks' regulatory framework and requires far-reaching changes of internal organization, IT systems, capitalization, financial instruments, etc. Therefore, an appropriate time schedule will be crucial. In this context, we would like to underline that the co-operative banking model does not allow increases of share capital on the short-term, since they do not have access to capital markets to increase equity, but rather rely on their members and on building up reserves. Thus, under unfavorable circumstances, deleveraging may not only imply an increase of capital, but also a cut down of loan exposures.

This makes evident that the new rules will have an impact on the general economy. Thus, it will be important to strike the right balance between financial stability and economic growth.

The aim of the new Basel framework, i.e. to improve the resilience of banks and to enhance the stability of markets, can only be achieved if it is applied all over the world at the same time. Without convergent and simultaneous implementation, there will be a distortion of competition, the impact of which would seriously affect the profitability and thus the competitiveness of European Banks.

II. General Aspects

A. EBA Mandates

i. Reduce the workload

Both the CRR and the CRD mandate a wide range of tasks to EBA. Many of these tasks have to be fulfilled within a very limited time frame. Many technical standards, especially those as regard capital, have to be implemented by 1st January 2013. The members of the EACB take the view that EBA will not be able to meet its obligations under such time constraints. The burden for EBA should rather be reduced.

The European Parliament and the Council should therefore review the EBA mandates for technical standards. In many cases, only further clarification of the so-called level 1 text by EBA in the form of standards are necessary. In some cases guidelines instead of standards would be sufficient, in order to update certain CEBS guidelines. Finally, in other cases it may even be appropriate to fully delete those standards.

ii. The right scope for EBA mandates

During our analysis of the documents, we noticed that in most cases, where EBA was mandated to draft technical standards, the proposal suggests to draft "regulatory technical standards" and not "implementing technical standards". This means that both Parliament and Council mandate the Commission and EBA with the power "to supplement or amend certain non-essential elements of the legislative act". In this way EBA may add an "additional layer" of regulation on many provisions. There is an implicit danger of a consequent "goldplating" by EBA. We therefore recommend examining whether it would not be appropriate, in many cases, to rather limit the mandate of EBA to drafting implementing technical standards.

B. Proportionality

The substance of the future directive and regulation as well as any measures based on them, in particular the standards drafted by EBA, have to reflect the size, scale of operations and the range of activities of the banks in question.

There are banks of different sizes and complexity in the EU, as well as diverse forms of companies with differing elements and structures (e.g. commercial banks, cooperative banks, etc.). The corporate governance of co-operative banks is very specific in a number of respects. These specificities have to be considered.

The concept of a "single rule book" must not be understood as "a single rule fits all". In particular, when EBA is to develop technical implementing standards and supervise the application of CRD IV/CRR I, the principle of proportionality must be applied.

Therefore, it should be stated explicitly in both directive and regulation that the principle of proportionality has to be respected, both when developing technical standards and applying EU law.

The EACB therefore suggests inserting the following sentence into Recital 63 of the CRD 4 and in Recital 89 of the CRR.

Suggestion for wording -
Proposal for a Directive
Recital (63) (new)

Text proposed by the Commission	*EACB Suggestion for wording*
	When creating draft implementing technical standards and regulatory technical standards

	according to this directive the European Banking Authority and the European Commission have to ensure that those standards and their requirements can be applied by all different institutions concerned in a way that is proportionate to the nature, scale and complexity of the institutions and its activities.

Suggestion for wording -
Proposal for a Regulation
Recital (89) CRR (new)

Text proposed by the Commission	*EACB Suggestion for wording*
	When creating draft implementing technical standards and regulatory technical standards according to this regulation the European Banking Authority and the European Commission have to ensure that those standards and their requirements can be applied by all different institutions concerned in a way that is proportionate to the nature, scale and complexity of the institutions and its activities.

C. Date of Implementation

Many important parts of the CRD/CRR are to be implemented by the 1st January 2013. Even under optimistic conditions, these two texts will not be adopted before mid 2012. At that moment in time, many implementing technical standards and regulatory technical standards, which determine important details, will not be adopted. Many standards will probably only be available "just in time" for the beginning of the year 2013.

Moreover, even if the standards only confirm existing rules, banks will not be in a position to implement the rules in time, especially if they are not aware of the relevant details sufficiently in advance. Where standards require specific changes e.g. as regards IT, organizational procedures, financial instruments or even statutes it will be impossible to meet that deadline.

The EACB therefore suggests that banks should given at least a period of twelve months for implementation after the adoption of any standard. This period should be longer where a change of statutes is required.

The EACB therefore suggests adding a new Recital.

Suggestion for wording - Application of standards
Proposal for a Regulation
Recital 90(a) new)

Text proposed by the Commission	*EACB Suggestion for wording*
	90a. new Notwithstanding any other provisions in this regulation, implementing technical standards and regulatory technical standards need to be applied by institutions not earlier than 12 months after their publication in the Official Journal.

As this should also apply to delegated and implementing acts the EACB suggests inserting a new sub paragraph in Art. 447:

Suggestion for wording - Application of standards
Proposal for a Regulation
Article 447(2a) (new)

Text proposed by the Commission	*EACB Suggestion for wording*
	2a. new Notwithstanding any other provisions in this regulation, implementing acts and delegated acts need to be applied by institutions not earlier than 12 months after their publication in the Official Journal.

III. Own Funds – Common Equity Tier 1

A. Classification of Co-operative Shares as Equity

The members of the EACB appreciate the attention dedicated to the particularities of their common equity instruments in Articles 25 and 27 CRR. Specific rules for those instruments are necessary as well as justified to reflect their specificities, which have proven their value throughout the recent and previous crises.

The relevant Articles reflect the work of CEBS on its "Guidelines on Art. 57a" of 2010[1] which are currently implemented by co-operative banks and mutuals throughout the EU. We consider it necessary that for the drafting technical standards on common equity instruments of cooperatives and mutuals, the principles that were set out in these CEBS Guidelines and the feedback document of 14 June 2010[2] should be the basis.

The members of the EACB take the view that discussion on these basic elements should not be reopened and that therefore no significant changes to the text are required.

i. Clarification

The wording of the relevant Articles 25 and 27 CRR, especially as regards the interconnection between the conditions of Article 26 and 27, 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. It is not possible to meet both the requirements of Article 26 (1)(f) and (g) and 27 (2) and (4)).

Thus in order to avoid any misunderstandings, we suggest amending Article 25 (1) (b) and 27 (1) as follows:

Suggestion for wording –
Proposal for a Regulation
Article 25(1)(b)

Text proposed by the Commission	*EACB Suggestion for wording*
(1) Common Equity Tier 1 items shall include any capital instrument issued by an institution under its statutory terms provided the following conditions are met: (…) (b) the conditions laid down in Articles 26 and 27 are met	(1) Common Equity Tier 1 items shall include any capital instrument issued by an institution under its statutory terms provided the following conditions are met: (…) (b) the conditions laid down in Articles 26 ***as amended by Article 27*** are met

Suggestion for wording –
Proposal for a Regulation
Article 27(1)

Text proposed by the Commission	*EACB Suggestion for wording*
(1) Capital instruments issued by mutuals,	(1) Capital instruments issued by mutuals,

[1] http://www.eba.europa.eu/documents/Publications/Standards--Guidelines/2010/Guidelines_article57a/Guidelines_article57a.aspx
[2] http://www.eba.europa.eu/documents/Publications/Standards---Guidelines/2010/Guidelines_article57a/FS_Guidelines_article57a.aspx

cooperative societies and similar institutions shall qualify as Common Equity Tier 1 instruments only if the conditions laid down in Article 26 and 27 are met.	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.

ii. Different Shares

Moreover, we think that the current wording of Article 27 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.

In addition, it seems that the current text does not take on board all aspects of the CEBS feedback document to CEBS' "Consultation Paper on Implementation Guidelines regarding Instruments referred to in Article 57(a) from 14th June 2010[3]. In particular, we think that the following passage on page 21 of that document needs to be considered: "*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*".

We therefore suggest amending article 27 (4) and (5) as follows:

Suggestion for wording –
Proposal for a Regulation
Article 27(4)

Text proposed by the Commission	*EACB Suggestion for wording*
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.***

[3] http://www.eba.europa.eu/documents/Publications/Standards---Guidelines/2010/Guidelines_article57a/FS_Guidelines_article57a.aspx

Suggestion for wording –
Proposal for a Regulation
Article 27(5)

Text proposed by the Commission	*EACB Suggestion for wording*
5. Where the capital instruments entitle their owners to a claim on the assets of the institution in the event of its insolvency or liquidation that is fixed or subject to a cap~~, ***such a limitation shall apply to the same degree to all holders of all Common Equity Tier 1 instruments issued by the institution.***~~	5. Where the capital instruments entitle their owners to a claim on the assets of the institution in the event of its insolvency or liquidation that is fixed or subject to a cap. ***Other Common Equity Tier 1 instruments may be entitled to different rights in liquidation provided that they are entitled to a claim on the assets that is proportional to their share of capital.***

iii. Preferential distributions

Instruments may differ in their voting rights and lower voting rights are compensated by higher dividends. The right to higher dividends is typically based on the bylaws of an entity. 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.

Instruments with different voting rights are especially important in safeguarding sufficient ownership in central bodies cf. Article 9 CRR. Article 26(1)(h)(i) CRR mentions the concept of' preferential rights' to payments of distributions' which is not defined in the CRR or CRD and is not an established concept either.

In this respect, we appreciate the amendment proposed by Mr. Karas. We however suggest to further clarify his amendment as follows:

Suggestion for wording –
Proposal for a Regulation
Article 26(1)(h)(iii)

Text proposed by the Commission	*EACB Suggestion for wording*
(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***;*** ***Higher or lower ~~and a multiple~~ of the*** ~~dividend~~ ***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.

iv. Subsidiaries of Co-operative Organizations

The current definition does not address cases 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 the case of Austria, 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 Austrian local 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.

It may therefore be appropriate to address these cases by modifying Article 25(1)(a) as follows:

Suggestion for wording –
Proposal for a Regulation
Article 25(1)(a)

Text proposed by the Commission	*EACB Suggestion for wording*
(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 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;

B. Classification of Co-operative Shares as Equity- additional features

There are some elements new to the definition of common equity for co-operative banks, especially Article 25 (1)(c), according to which *"the instrument does not possess features that could cause the condition of the institution to be weakened as a going concern during periods of market stress."*

There can be no denying that co-operative equity instruments have to meet such condition. The aim must be that cooperative shares are always available to absorb the losses as they occur, see Recital 53 CRR. However, the current drafting could allow to restrict and to modify the eligibility criteria set out in Article 26 and 27 and introduce new criteria for recognition through the backdoor. The requirements defined in the regulation during the legislative process must not be derogated by a general clause.

Therefore, there should rather be specific and evident features that the instrument does not meet the required criteria. The members of the EACB therefore suggest modifying Article 25(1)(c) as follows:

Suggestion for wording –
Proposal for a Regulation
Article 25(1)(c)

Text proposed by the Commission	*EACB Suggestion for wording*
(c) the instrument does not possess features that could cause the condition of the institution to be	(c) the instrument does not possess ***any specific*** features that could cause the condition of the

weakened as a going concern during periods of market stress	institution to be weakened as a going concern during periods of market stress.

C. Classification of Co-operative Shares as Equity- EBA Mandate

The members of the EACB have some doubts regarding the EBA mandate in Article 25(2)(b). In fact, we wonder whether "market stress" requires a specific technical standard. We rather think that this issue should be regulated in the regulation itself.

Suggestion for wording –
Proposal for a Regulation
Article 25(2)(b)(ii)

Text proposed by the Commission	*EACB Suggestion for wording*
2. EBA shall develop draft regulatory technical standards to specify the following: (…) (b) the nature and extent of the following (…) ***(ii) the market stress under which such features could cause the condition of the institution to be weakened as a going concern.***	2. EBA shall develop draft regulatory technical standards to specify the following: (…) (b) the nature and extent of the following (…) ~~***(ii) the market stress under which such features could cause the condition of the institution to be weakened as a going concern.***~~

D. Deductions

i. Holdings within co-operative groups

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. This is 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, which adheres to the same institutional protection scheme provides an infrastructure, which is essential for the proper functioning of the local banks. The members of the EACB would therefore strongly appreciate if Article 46(3)(b) provides for a solution to allow for not deduction of "strategic holdings" in an Institutional Protection Scheme.

However, we think that this rule does not reflect the reality of all co-operative banking groups in Europe. In some countries there is not a network subject to legal or statutory provisions and more importantly the central institutions may perform cash-clearing operations only under a legally-binding 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 term "company" should be used in Article 46(3)(b).

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 in Art 108(7)(e) to an aggregated balance sheet, because Art 108(7)(e) also aims at avoiding double gearing within the group.

Furthermore, it should be recognized that decentralized systems need an IPS which is not necessary for consolidated groups as inArt 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 required from consolidated groups.

We therefore suggest amending Article 46(3) as follows:

Suggestion for wording –
Proposal for a Regulation
Article 46(3)(b)

Text proposed by the Commission	*EACB Suggestion for wording*
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***,*** 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); (iv) the conditions laid down in Article 108(7) are satisfied;	(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;
(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.***

ii. Holdings within financial conglomerates

The 'Financial Conglomerates Directive 2002/87/EC has introduced group-wide supplementary supervision for financial conglomerates with the aim to control potential risks arising from double gearing and group risks. The conglomerate directive has so far served its purpose well and succeeded in avoiding any capital problems in bank insurance groups.

The current rule, that conglomerate supervision can replace the deduction of insurance holdings should not be questioned. In fact, the method applied under the 'Financial Conglomerates Directive' represents a more advanced approach to the risk of conglomerates than deduction. The members of the EACB therefore strongly support maintaining the concept of Art. 46(1) CRR or follow a similar advanced wording as in a Council Draft Compromise text.

i. EBA mandate regarding Article 46(5)

With regard to the multitude of the EBA mandates, the members of the EACB do not see the need for technical standards to further elaborate on rules which are already quite precise. The conditions set out in Article 46 and Article 108(7)(e) are sufficiently precise and already applied for a long time by application of the Directive 2006/48/EC in many countries. The provisions of Article 80(8) -Directive 2006/48/EC (corresponding to the Article 108 (7) CRR I) and the provisions of Article 113 (4) (d) -Directive 2006/48/EC are already applied for years.

It is therefore suggested to delete the relevant EBA mandate in Article 46 (5):

Suggestion for wording –
Proposal for a Regulation
Article 46(5)

Text proposed by the Commission	*EACB Suggestion for wording*
5. EBA shall develop draft regulatory technical standards to specify the conditions of application of point (b) of paragraph 3. ***EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2013.*** ***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first sub-paragraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010***	***deleted***

iii. Deductions of certain Holdings

The EACB thinks that the risk weight assigned to holdings not deducted pursuant to Art 46 (1), (2) or (3) in the standard approach of 100% should be clarified. The reference only to Chapter 2 of Titel II of Part Three would be unclear because Art 128 makes reference back also to Art 45(2) with a risk weight of 250 %. A risk weight of 250% is not intended and would be contrary to the purpose of Art 46 (1), (2) and (3) (no need to

deduct certain holdings under stricter provisions) and massively constrain the effect of this Article.

Suggestion for wording -
Proposal for a Regulation
Article 46(3)(aa) new

Text proposed by the Commission	*EACB Suggestion for wording*
	(aa) new The holdings in respect of which deduction is not made in accordance with paragraphs 1, 2 or 3 shall qualify as equity exposures and be risk weighted at 100% or in accordance with Chapter 3 of Title II of Part Three, as applicable.

Moreover, the risk weight assigned to items not deducted pursuant to Art 43(4) in the standard approach is 100% should also be clarified. The reference only to Chapter 2 of Titel II of Part Three would be unclear because Art 128 makes reference back also to Art 45 (2) with a risk weight of 250 %. A risk weight of 250% is not intended.

Suggestion for wording -
Proposal for a Regulation
Article 43(4)

Text proposed by the Commission	*EACB Suggestion for wording*
The amount of holdings referred to in point (h) of Article 33(1) that is equal to or less than 10 % of the Common Equity Tier 1 items of the institution after applying the provisions laid down in points (a)(i) to (iii) of paragraph 1 shall not be deducted and shall be subject to the applicable risk weights in accordance with Chapter 2 or 3 of Title II of Part Three and the requirements laid down in Title IV of Part Three, as applicable.	The amount of holdings referred to in point (h) of Article 33(1) that is equal to or less than 10 % of the Common Equity Tier 1 items of the institution after applying the provisions laid down in points (a)(i) to (iii) of paragraph 1 shall not be deducted and ***shall be risk weighted at 100% or*** be subject to the applicable risk weights in accordance with Chapter 2 or 3 of Title II of Part Three and the requirements laid down in Title IV of Part Three, as applicable.

iv. Deduction of intangible assets

In conformity with the decision taken at the level of the Basel Committee, the European Commission's proposal requires banks to deduct intangible assets from Common Equity Tier 1. The rationale underlying this decision is that intangible assets (notably "goodwill", i.e. the price supplement paid when acquiring another company) cannot be used to indemnify creditors in a stress situation and hence cannot be considered as absorbing losses.

Which assets are to be considered as intangible, however, relies on the applicable accounting standards. It appears, more particularly, that software - which is essential to the daily operations and risk management of a bank – is being classified as intangible assets under IFRS whereas other accounting standards, including those applicable in the

US, allow classifying software as tangible assets (as part of the section "Property, Plants and Equipment"). As a result, software needs to be deducted from Common Equity Tier 1 in the European Union but not in the United States. This puts European institutions at a serious competitive disadvantage. The Basel text has taken into account that accounting standards may diverge in this regard and has, more particularly, stipulated that banks which report their Own Funds under "local GAAP" (i.e. national accounting standards) can make use of the IFRS definition of intangible assets to determine which assets are being classified as intangible (and are thus required to be deducted) (see paragraph 68 of Basel III). While this remedied, as intended, situations where local GAAP was less favourable than IFRS, it did not provide for an appropriate solution to leveling the playing field whenever local accounting standards were more favourable.

Suggestion for wording -
Proposal for a Regulation
Article 34(c) new

Text proposed by the Commission	*EACB Suggestion for wording*
Institutions shall determine the intangible assets to be deducted in accordance with the following: (a) the amount to be deducted shall be reduced by the amount of associated deferred tax liabilities that would be extinguished if the intangible asset became impaired or were derecognised under the relevant accounting standard; (b) the amount to be deducted shall include goodwill included in the valuation of significant investments of the institution.	Institutions shall determine the intangible assets to be deducted in accordance with the following: (a) the amount to be deducted shall be reduced by the amount of associated deferred tax liabilities that would be extinguished if the intangible asset became impaired or were derecognised under the relevant accounting standard; (b) the amount to be deducted shall include goodwill included in the valuation of significant investments of the institution; ***(c) the amount to be deducted shall be reduced by the amount of software classified as intangible assets under the relevant accounting standards.***

E. Minority interest

i. Avoiding double deduction

A general problem is that in the text of the Basel III and also in the CRR the intangibles related to minority interests are deducted twice, if the intangibles are either related to an unregulated entity (i.e. Software Company) or to the surplus capital of a credit institution or an investment firm. This is especially detrimental for the central institutions of the co-operative networks which are the majority owners of ancillary services companies or other unregulated financial firms (e.g. factoring companies, leasing companies).

There are two possibilities to avoid the problem of double counting. One is to exempt the detraction of intangibles which are related with and proportionate to the minority interests not included in the regulatory capital. The other, perhaps more promising would be to permit to apply the pro rata consolidation in case of these companies, if the minority interests are exclusively or overwhelmingly those of the members of the co-operative or saving banks network. However, one should be aware that for prudential consolidation the permitting pro rata consolidation instead of full consolidation for the majority owner is a difference with Basel III, where such an exemption is not available.

In case of items previously already deducted from own funds, the deduction of the minority interests shall be decreased by the sum of the proportional share related to the minority shareholders. This adjustment must relate to that part of the own funds, from which the original item was deducted.

Moreover, in order to achieve the same treatment in the case of a banking group within which the central institution is a subsidiary and at the same time the only member of the IPS, we propose to amend Article 16 (2a) as follows:

Suggestion for wording -
Proposal for a Regulation
Article 16 (2a) new

Text proposed by the Commission	*EACB Suggestion for wording*
2. However, the competent authorities may on a case-by-case basis permit proportional consolidation according to the share of capital that the parent undertaking holds in the subsidiary. Proportional consolidation may only be permitted where all of the following conditions are fulfilled: (.....)	2. However, the competent authorities may on a case-by-case basis permit proportional consolidation according to the share of capital that the parent undertaking holds in the subsidiary. Proportional consolidation may only be permitted where all of the following conditions are fulfilled: (.....) ***2a. Central institutions, or its parent institutions in networks linked by a relationship according to article 108 (7) or article 389 (2) d) may use the proportional consolidation method referred to in Article 16 (2) in case of ancillary companies and other financial institutions, where the central institution or its parent institutions is the majority owner and the minority shareholders are exclusively or predominantly members of the network concerned.***

ii. Minority Interest in Operative Subsidiaries and Pillar 2 acceptance in the calculation of own funds

The EACB agrees to the rationale of the Commission that minority capital is not available to the whole group, but only to the respective subsidiary or subgroup. On the other hand minority interest reduces the probability of the subsidiary's failure and thus contributes to the strength of the whole group.

We also recognise the intention of the Commission to curb structures which take advantage of excessive minority interest. The present wording, however, is of concern to banks with operative subsidiaries as the proposed text has unintended consequences for minorities held in such subsidiaries.

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)].

This adopts the flawed wording of paragraph 62 of the Basel III paper that only considers two-tier group structures and mingles stand alone and consolidated own funds

requirements. Meanwhile, the BCBS has given a correcting interpretation (cf. question 6 on paras. 62-65 of the Basle III definition of own funds FAQs issued in October 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 Basle III wording or requires an amended wording for multi-tier group structures.

The far more detailed wording of the CRR does not allow for such 'correcting' interpretation and thus leads to unintended consequences for minorities stakes held in certain subsidiaries:

As a general rule holdings in subsidiary institutions have to be deducted from own funds (see Art.33 para.1 point (h) and (i)) in order to avoid multiple use of own funds ("multiple gearing"). Only where such subsidiaries are included in consolidated supervision an exemption is granted (see Art.46 para.2). As a consequence interim holding companies of subgroups very often hold own funds for their subsidiaries, as they do not have to deduct these holdings in consolidated subsidiary institutions from their own funds. This seemingly makes them look overcapitalised on a stand alone basis. Multiple gearing is avoided in the consolidation process where holdings in subsidiaries have to be deducted from own funds anyway.

Consequently for an interim holding company the own funds requirement on a stand alone basis will always be much lower than the own funds requirement on a consolidated basis due. 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 an interim holding company will always be calculated on the stand alone basis (as opposed to the correcting BCBS interpretation).

In the case of an interim holding company that issues shares to third parties minorities (e.g. public investors via the stock exchange) would, however, lead to a double deduction of holdings in consolidated subsidiary institutions. These amounts are deducted from own funds of the interim holding company for the first time in course of standard consolidation and a second time by neglecting them when calculating the own funds requirement on a stand alone basis.

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 an interim holding companygroup member will always be calculated on the stand alone basis (as opposed to the correcting BCBS interpretation).

These unintended consequences that also contradict BCBS interpretation can be avoided by replacing "the lower of" by "the higher of".

Minority interest should thus be recognized at least up to the maximum level effectively required by the host authority or to the maximum level required by the home authority to cover the contribution to the consolidated requirements, as both these measures reflect supervisors' assessment of the subsidiary's actual risks.

[4] http://www.bis.org/publ/bcbs204.pdf

This approach would allow the Commission to penalise structures which take advantage of excessive minority interest while allowing minority interest in operative subsidiaries or operative subgroups.

We therefore suggest amending Article 79(a)(i), Article 80(a)(i) and (ii) and Article 82(a)(i)(ii) accordingly:

Suggestion for wording -
Proposal for a Regulation
Article 79(a)(i) and (ii)

Text proposed by the European Commission	*Suggestion for wording*
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: (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]; (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];	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 ***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**[…]**)**,** 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)**,** ***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.

	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.***

Suggestion for wording -
Proposal for a Regulation
Article 80(a)(i) and (ii)

Text proposed by the European Commission	*Suggestion for wording*
Institutions shall determine the amount of qualifying Tier 1 capital of a subsidiary that is included in consolidated Tier 1 capital by subtracting from the qualifying Tier 1 capital 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 qualifying Tier 1 capital of a subsidiary that is included in consolidated Tier 1 capital by subtracting from the qualifying Tier 1 capital of that undertaking the result of multiplying the amount referred to in point (a) by the percentage referred to in point (b).
(a) the lower of the following:	(a) the ***Tier 1 capital of the subsidiary minus the*** highest of the following:
(i) the amount of Tier 1 capital of the subsidiary required to meet the sum of the requirement laid down in point (b) of Article 87(1) and the combined buffer referred to in Article 122(2)of Directive [inserted by OP];	(i) the amount of Tier 1 capital of the subsidiary required to meet the sum of the requirement laid down in point (b) of Article 87(1)**,** ***the specific own funds requirement 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 Tier 1 capital that relates to the subsidiary that is required on a consolidated basis to meet the sum of the requirement laid down in point (b) of Article 87(1) and the combined buffer referred to in Article 122(2)of Directive [inserted by OP];	(ii) the amount of consolidated Tier 1 capital that relates to the subsidiary that is required on a consolidated basis to meet the sum of the requirement laid down in point (b) 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.***

Suggestion for wording -
Proposal for a Regulation
Article 82(a)(i) and (ii)

Text proposed by the European Commission	*Suggestion for wording*
Institutions shall determine the amount of qualifying own funds of a subsidiary that is included in consolidated own funds by subtracting from the qualifying own funds 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 qualifying own funds of a subsidiary that is included in consolidated own funds by subtracting from the qualifying own funds of that undertaking the result of multiplying the amount referred to in point (a) by the percentage referred to in point (b):
(a) the lower of the following:	(a) the ***own funds of the subsidiary minus the*** highest of the following:
(i) the amount of own funds of the subsidiary required to meet the sum of the requirement laid down in point (c) of Article 87(1) and the combined buffer referred to in Article 122(2) of Directive [inserted by OP];	(i) the amount of own funds of the subsidiary required to meet the sum of the requirement laid down in point (c) of Article 87(1)**, *the specific own funds requirement 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.***
(ii) the amount of own funds that relates to the subsidiary that is required on a consolidated basis to meet the sum of the requirement laid down in point (c) of Article 87(1) and the combined buffer referred to in Article 122(2)of Directive [inserted by OP];	(ii) the amount of own funds that relates to the subsidiary that is required on a consolidated basis to meet the sum of the requirement laid down in point (c) 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***

F. Prudential Filters

i. Cash flow hedges and changes in the value of own liabilities

During phases of high volatility, like the current one in the sovereign bond markets, in the absence of prudential filters, the inclusion of unrealized gain and losses in the supervisory capital might imply an unjustified volatility of the said capital as the result of sudden changes in the price of the sovereign bonds which- however - are not related to long-lasting changes in the credit fundamentals of the issuers.

As communicated by the IASB, the measurement changes to IFRS 9 will be reviewed once the later phases of replacement of IAS 39 will have been finalized. The forthcoming replacement of IAS 39 by IFRS 9 will fundamentally change the classification and

measurement of financial instruments and, therefore, also the extent to which unrealized fair value gains and losses will be recognized in the financial statements. In particular, IFRS 9 will cancel the use of Available-For-Sale assets, as financial assets will be recognized at either fair value through P/L or amortized cost.

We strongly suggest to maintain the prudential filter, which applies to unrealised gains and losses, at least until IASB has finalized its work.

Suggestion for wording -
Proposal for a Regulation
Article 30

Text proposed by the Commission	*EACB Suggestion for wording*
Institutions shall not include the following items in any element of own funds: (a) the fair value reserves related to gains or losses on cash flow hedges of financial instruments that are not valued, including projected cash flows; (b) gains or losses on liabilities of the institution that are valued at fair value that result from changes in the own credit standing of the institution.	Institutions shall not include the following items in any element of own funds: (a) the fair value reserves related to gains or losses on cash flow hedges of financial instruments that are not valued, including projected cash flows; (b) gains or losses on liabilities of the institution that are valued at fair value that result from changes in the own credit standing of the institution.; ***(c) unrealized gains or losses on EU sovereign debt that are valued at fair value and held in the available for sale category.*** ***Until the review of the IFRS due to eliminate the available for sale category, EBA shall draft technical standards to specify the conditions according to which letter c) shall apply.***

IV. Own Funds – Additional Tier 1 and Tier 2 capital

A. Conversion and Write-down of additional Tier 1 and Tier 2

i. Conversion and Write-down of additional Tier 2

According to Recital 27 CRR, 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 we suggest to delete the reference to Tier 2 in the recital.

Suggestion for wording -
Proposal for a Regulation
Recital 27

Text proposed by the Commission	*EACB Suggestion for wording*
(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 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.

ii. Conversion and Write-down of additional Tier1 – Temporary Write-down and write up

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 of a write-up when the bank's capital ratios were to return above the trigger event.

We therefore suggest allowing for a temporary write-down of instruments and modify recital 27 and article 49(1) accordingly.

Suggestion for wording -
Proposal for a Regulation
Recital 27

Text proposed by the Commission	*EACB Suggestion for wording*
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.	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~~*** ***temporarily*** written down or converted fully into Common Equity Tier 1 capital at the point of non-viability of the institution.

Suggestion for wording -
Proposal for a Regulation
Article 49(1)(n)

Text proposed by the Commission	*EACB Suggestion for wording*
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;

Suggestion for wording -
Proposal for a Regulation
Article 49(2)(b) and (c)(ii)

Text proposed by the Commission	*EACB Suggestion for wording*
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***	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***

Tier 1 instrument, as applicable	***basis.*** ~~***down the principal amount of the instrument, or converting it to a Common Equity Tier 1 instrument, as applicable***~~

iii. Conversion and Write-down of additional Tier1 – Application to G-SIFIs only

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). In our view, loss absorbing capacity beyond the common standards, even at the point of non-viability, is a macro prudential tool to address the "cross-sectional dimension" of system-wide risk.

The key principle in this context is to ensure that the standards are calibrated with respect to the contribution that each institution makes to the system as a whole, not just with respect to its riskiness on a stand alone basis. G-SIFIs play a disproportionate role in extreme events. Many small local banks would have to fail simultaneously to generate the same impact as that of the failure of a single, large internationally active institution. This provides support for this kind of measure and in general for tighter prudential standards for G-SIFIs.

Suggestion for wording -
Proposal for a Regulation
Recital 27

Text proposed by the Commission	*EACB Suggestion for wording*
(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 ***a global systematically important financial institutions*** should be fully and ***temporarily*** written down or converted fully into Common Equity Tier 1 capital at the point of non-viability of the institution.

Suggestion for wording -
Proposal for a Regulation
Article 49(1)(2)

Text proposed by the Commission	*EACB Suggestion for wording*
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; (...) 2. EBA shall develop draft regulatory technical	1. Capital instruments shall qualify as Additional Tier 1 instruments only if the following conditions are met: (...) (n) ***in the case of global systematically relevant financial institutions*** 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; (...) 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	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 (...) ***(f) global systematically relevant financial institutions***

iv. Conversion and Write-down of additional Tier1 - Definition of the trigger event

The Basel text does not calibrate the trigger event and thus leaves room in the CRR I to do so. In Article 51 (a) it is defined as occurring when the Common Equity Tier 1 capital ratio is at or below 5.125%.

However, Article 87 (1) a) of CRR 1 requires a minimum Common Equity Tier 1 ratio of 4.5%. We wonder whether such a high ratio is appropriate. It would make the 5.125% Common Equity Ratio imperative and make Article 87(1) irrelevant.

We therefore suggest decreasing the trigger event down to the amount of the minimum requirement.

Suggestion for wording -
Proposal for a Regulation
Article 51(a)(i) and (ii)

Text proposed by the Commission	*EACB Suggestion for wording*
For the purposes of point (n) of Article 49(1), the following provisions shall apply to Additional Tier 1 instruments: (a) trigger event occurs when the Common Equity Tier 1 capital ratio of the institution referred to in point (a) of Article 87 falls below either of the following: (i) ***5.125 %;*** (ii) a level higher than ***5.125 %,*** where determined by the institution and specified in the provisions governing the instrument;	For the purposes of point (n) of Article 49(1), the following provisions shall apply to Additional Tier 1 instruments: (a) trigger event occurs when the Common Equity Tier 1 capital ratio of the institution referred to in point (a) of Article 87 falls below either of the following: (i) ***~~5.125~~*** ***4.5*** %; (ii) a level higher than ***~~5.125~~*** ***4.5*** %, where determined by the institution and specified in the provisions governing the instrument

B. EBA Mandate for temporary waiver from own funds

The members of the EACB have some doubts regarding the EBA mandate in Article 74(2). A comprehensive definition of "temporary", which is valid for any individual case of temporary holdings, cannot be achieved upfront. We rather think that this mandate should be deleted.

Suggestion for wording -
Proposal for a Regulation
Article 74(2)

Text proposed by the Commission	*EACB Suggestion for wording*

2. EBA shall develop draft regulatory technical standards to specify ***the concept of temporary for the purposes of paragraph 1 and*** the conditions according to which a competent authority may deem the temporary holdings referred to be for the purposes of a financial assistance operation designed to reorganise and save a relevant entity. EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2013. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first sub-paragraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.	2. EBA shall develop draft regulatory technical standards to specify ~~***the concept of temporary for the purposes of paragraph 1 and***~~ the conditions according to which a competent authority may deem the temporary holdings referred to be for the purposes of a financial assistance operation designed to reorganise and save a relevant entity. EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2013. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first sub-paragraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

V. Capital Requirements

A. Initial Capital

Pursuant to the current CRD's transitional provisions, small banks, which do not dispose of the initial capital of 5 million, may continue to conduct business, provided that their available own funds do not fall below the highest level of capital reached since 22 December 1989 (cf. Article 10(2) of Directive 2006/48/EC). This principle is maintained in Art 88(2) of the proposal of the CRR.

The CRR will lead to a qualitative refining of the definition of own funds. Certain capital elements will cease to be recognized (e.g. members' commitments, revaluation reserves) and the deduction rules become stricter. This may result in the unintended consequence that even sound small banks who comply with the current provisions, may see themselves fall below the highest level of capital reached by now, only due to these regulatory changes.

Since co-operative banks have limited access to capital markets for a capital increase, this lack of capital may require some time to be caught up, especially in the current economic situation. In order to avoid any problems, we suggest to amend Article 88(2) as follows:

Suggestion for wording -
Proposal for a Regulation
Article 88(2)

Text proposed by the Commission	*EACB Suggestion for wording*
2. Institutions that were already in existence on 1 January 1993, the own funds of which do not attain the required amount of initial capital may continue to carry on their activities. In that event, the own funds of those institutions may not fall below the highest level reached with effect from 22 December 1989.	2. Institutions that were already in existence on 1 January 1993, the own funds of which do not attain the required amount of initial capital may continue to carry on their activities. In that event, the own funds of those institutions may not fall below the highest level reached with effect from 22 December 1989. ***This level may be lowered to the extent that instruments referred to under article 463 (3), (4), (5) are no more eligible as capital under this regulation, or that the rules of this regulation require higher deduction from own funds according to Article 33, Article 43 to 46.***

B. Risk weights of institutions under the standardized approach

The regulation does not maintain the options regarding the determination of the risk weights to institutions under Article 80(3) CRD. A removal of this option is likely to translate into a de facto increase of risk weights for many institutions, the impact of which on the capital requirement has not been assessed. This is especially true for rated small/medium institutions and could have a seriously negative impact on these institutions' access to funding. Moreover, the removal of the central government risk weight based method for institutions is in direct conflict with the aim of reducing the reliance of banking supervision on external ratings.

It is therefore suggested to amend Article 108 by reintroducing the substance of Article 80(3) CRD, in line with Basel 2 framework:

Suggestion for wording -
Proposal for a Regulation
Article 108(2a) new

Text proposed by the Commission	*EACB Suggestion for wording*
	2a. For the purposes of calculating risk-weighted exposure amounts for exposures to institutions, Member States shall decide whether to adopt the method based on the credit quality of the central government of the jurisdiction in which the institution is incorporated or the method based on the credit quality of the counterparty institution in accordance with article 114 ss.

C. Treatment of SME loans and Risk Weight for Retail Portfolios

i. Balancing Factor

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 into 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.

It would be calculated as a multiplier that brings the final RWA to a level which, by applying the future standard capital ratio (10,5%), gives a capital requirement equivalent to that obtained by applying the current 8% ratio to an RWA calculated according to current rules. The inclusion of a balancing factor of **76.19%** into the RWA calculation formula would hence be appropriate: $\mathbf{RWA_{CRRI}=76.19\% \times RWA_{B3}}$.

Suggestion for wording -
Proposal for a Regulation
Article 118

Text proposed by the Commission	*EACB Suggestion for wording*
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***

ii. Increasing the retail ratio

The EACB thinks the requirement concerning the retail exposure threshold of EUR 1 million is inappropriate. This amount was already mentioned in Article 79 of the Directive 2006/48/EC which had been issued several years ago. Thus, this threshold should be adjusted as regards inflation.

The EACB rather proposes to raise the threshold for retail exposures up to EUR 2 million instead of 1 million.

Suggestion for wording -
Proposal for a Regulation
Article 118(1)(c)

Text proposed by the Commission	*EACB Suggestion for wording*
(c) the total amount owed to the institution and parent undertakings and its subsidiaries, including any exposure in default, by the obligor client or group of connected clients, but excluding claims or contingent claims secured on residential property collateral, shall not, to the knowledge of the institution, exceed EUR ***1*** million. The institution shall take reasonable steps to acquire this knowledge.	(c) the total amount owed to the institution and parent undertakings and its subsidiaries, including any exposure in default, by the obligor client or group of connected clients, but excluding claims or contingent claims secured on residential property collateral, shall not, to the knowledge of the institution, exceed EUR ~~***1***~~ ***2*** million. The institution shall take reasonable steps to acquire this knowledge.

Suggestion for wording -
Proposal for a Regulation
Article 142(5)(a)(ii)

Text proposed by the Commission	*EACB Suggestion for wording*
(a) (ii) to a small or medium sized enterprise, provided in the latter case that the total amount owed to the institution and parent undertakings and its subsidiaries, including any past due exposure, by the obligor client or group of connected clients, but excluding claims or contingent claims secured on residential property collateral, shall not, to the knowledge of the institution, which shall have taken reasonable steps to confirm the situation, exceed EUR ***1*** million;	(a) (ii) to a small or medium sized enterprise, provided in the latter case that the total amount owed to the institution and parent undertakings and its subsidiaries, including any past due exposure, by the obligor client or group of connected clients, but excluding claims or contingent claims secured on residential property collateral, shall not, to the knowledge of the institution, which shall have taken reasonable steps to confirm the situation, exceed EUR ~~***1***~~ ***2*** million;

We propose a preferred risk weight of 65% for "non-retail" SME up to a total exposure of EUR 20 million.

Suggestion for wording -
Proposal for a Regulation
Article 117(3) new

Text proposed by the Commission	*EACB Suggestion for wording*
	(3) Exposures to corporates or small and medium sized enterprises not qualifying as "retail exposure" under Article 118 for which such a credit assessment is not available, shall be assigned a 65 % risk weight, provided that the total amount owed to the institution and parent undertakings and its subsidiaries shall not exceed EUR 20 million.

D. IRB

i. Caps on LGDs

The Commission proposes in Article 160 (4)the permanent LGD floors on residential real estate loans not lower than 10 % and commercial real estate loans not lower than 15 %. This approach appears to be against the aim of more risk sensitive regulatory framework and gives rise to a disincentive for banks to invest and develop IRB models. It would also question the reliability of banks' own LGD estimates and could decrease the supervisor's interest to monitor IRB models.

Moreover, real estate markets are highly different in the EU. Therefore national authorities should have possibility to set LGD floors in their jurisdiction if they can prove that such approach is reasonable with regard to the loss data collected from their banks under Article 96.

Suggestion for wording -
Proposal for a Regulation
Article 160(4)

Text proposed by the Commission	*EACB Suggestion for wording*
4. The exposure weighted average LGD for all retail exposures secured by residential property and not benefiting from guarantees from central governments shall not be lower than 10% The exposure weighted average LGD for all retail exposures secured by commercial immovable property and not benefiting from guarantees from central governments shall not be lower than 15%	4. The exposure weighted average LGD for all retail exposures secured by residential property and not benefiting from guarantees from central governments shall not be lower than 10% The exposure weighted average LGD for all retail exposures secured by commercial immovable property and not benefiting from guarantees from central governments shall not be lower than 15% ***Competent authorities may grant the permission to apply, by derogation from the two previous subparagraphs lower LGDs, if such treatment appears to be appropriate with regard to the data collected according to article 96.***

ii. EBA Mandate Regulatory standards to define recession scenarios stress testing

There are doubts regarding the necessity of "severe but plausible recession scenarios" for stress testing. The term in question is not new, but rather standard terminology in stress testing. Moreover, comprehensive guidance/interpretation by BCBS and EBA is available. Thus, further definition seems dispensable.

Suggestion for wording -
Proposal for a Regulation
Article 173(4)

Text proposed by the Commission	*EACB Suggestion for wording*
4. EBA shall develop draft implementing technical standards to specify in greater detail the meaning of severe but plausible recession scenarios referred to in paragraph 2. EBA shall submit those draft implementing	***deleted***

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.	

VI. Capital Buffers

Capital Conservation Buffer

As co-operative companies, most co-operative banks are "variable capital entities" characterized by the principle of "open membership": For any relevant period there is a certain inflow and an outflow of capital, since members come and go. Since the member shares are not listed, the redemption of shares, together with an almost permanent issue of shares, is a substitute for trading the instruments.

At the same time, the nominal value of shares is rather limited, as is also normally the number of shares that a single member can hold.

We think that the principle of "open membership" should not be unduly restricted by the capital conservation buffer requirement and therefore suggest the following clarification:

Suggestion for wording – Restrictions on distribution
Proposal for a Directive
Article 131(4)

Text proposed by the Commission	*EACB Suggestion for wording*
4. Member States shall require institutions to calculate the MDA by multiplying the sum calculated in accordance with point (a) by the factor determined in accordance with point (b). The MDA shall be reduced by any of the actions referred to in points (a), (b) or (c) of paragraph 2. (a) The sum to be multiplied shall consist of: (i) interim profits not included in Common Equity Tier 1 pursuant to Article 24(2) of Regulation [inserted by OP] that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in points (a), (b) or (c) of paragraph 2; plus (ii) year-end profits not included in Common Equity Tier 1 pursuant to Article 24(4) of Regulation [inserted by OP] that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in points (a), (b) or (c) of paragraph 2;	4. Member States shall require institutions to calculate the MDA by multiplying the sum calculated in accordance with point (a) by the factor determined in accordance with point (b). The MDA shall be reduced by any of the actions referred to in points (a), (b) or (c) of paragraph 2. (a) The sum to be multiplied shall consist of: (i) interim profits not included in Common Equity Tier 1 pursuant to Article 24(2) of Regulation [inserted by OP] that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in points (a), (b) or (c) of paragraph 2; plus (ii) year-end profits not included in Common Equity Tier 1 pursuant to Article 24(4) of Regulation [inserted by OP] that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in points (a), (b) or (c) of paragraph 2; ***plus*** ***(iii) any net inflow of Common Equity Tier 1 capital instruments of institutions referred to under article 25 of the Regulation [inserted by OP]***

Suggestion for wording – Capital Conservation Buffer
Proposal for a Directive
Article 132(1)

Text proposed by the Commission	*EACB Suggestion for wording*
1. Where an institution fails to meet its Combined Buffer Requirement, it shall prepare a capital conservation plan and submit it to the competent authority no later than 5 working days after it identified that it was failing to meet that requirement.	1. Where an institution fails to meet its Combined Buffer Requirement, it shall prepare a capital conservation plan and submit it to the competent authority no later than 5 working days after it identified that it was failing to meet that requirement, ***unless the competent authority authorises a longer delay. Competent authorities shall only grant such authorisations based on the individual situation of a credit institution and taking into account the nature, scale and complexity of the institution's activities.***

VII. Large Exposures

A. Large exposures Regime

i. Eligible capital

The Commission introduces the term "eligible capital" for calculating large exposure limits. Tier 2 capital is to be capped at 25% of the total for this purpose. The proposed change 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. This would significantly restrict their ability to lend to the corporate sector. The assessment base should continue to be calculated on the basis of ***all*** Tier 1 and Tier 2 capital.

Suggestion for wording –
Proposal for a Regulation
Article 4(23)(c)

Text proposed by the Commission	*EACB Suggestion for wording*
(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~~***

The deduction item is exempted from large exposures own funds in current CRD Article 66(3) of 2006/48/EC, while this exemption is not present in the CRR. The nature of the item is to make the bank resilient to future losses and as such it should not to be deducted from eligible capital of large exposures regime.

Suggestion for wording -
Proposal for a Regulation
Article 4(23)(a)

Text proposed by the Commission	*EACB Suggestion for wording*
(23) 'eligible capital' for the purposes of Title IV of Part Two and Part Five means the sum of the following: (a) Common Equity Tier 1 capital	(23) 'eligible capital' for the purposes of Title IV of Part Two and Part Five means the sum of the following: (a) Common Equity Tier 1 capital, ***the deduction in point (d) of Article 33(1) is not included in eligible capital;***

ii. Claims on institution in the form of minimum reserves

According to the current Large Exposure regime, an exposure to an institution - in the form of minimum reserves required by the ECB to be held by the credit institution – is not exempted from Large Exposure limits. This brings about a negative impact for smaller banks like many co-operative banks, which in almost all cases fulfill their minimum reserve requirements indirectly through their II level banks.

Suggestion for wording –
Proposal for a Regulation
Article 389(1)(l)new

Text proposed by the Commission	*EACB Suggestion for wording*
1. The following exposures shall be exempted from the application of Article 384(1): *(…)*	1. The following exposures shall be exempted from the application of Article 384(1): *(…)* ***(l) asset items constituting claims on institution in the form of minimum reserves required by the ECB or by the central bank of a Member State to be held by an institution provided that the conditions laid down in Article 114(4) are met;***

iii. Connected clients

Under the current CRD, the limit for large exposures is 25% for each client. This means for subgroups. The exposure of the parent company to a subgroup (group of subsidiaries) is limited to 25% of the own funds of the bank.

According to the rules proposed by the CRR, the group of subsidiaries may be considered as connected clients, so the group of subsidiaries would be treated as a single risk and the cap would apply to all of them.

We therefore support a modification of the large exposure regime, amending Article 4 (46) (a) as follows:

Suggestion for wording –
Proposal for a Regulation
Article 4(46)(a)

Text proposed by the Commission	Suggestion for wording
(a) two or more natural or legal persons who, unless it is shown otherwise, constitute a single risk because one of them, directly or indirectly, has control over the other or others unless the treatment set out in point (c) applies; (…)	(a) two or more natural or legal persons who, unless it is shown otherwise, constitute a single risk because one of them, directly or indirectly, has control over the other or others unless the treatment set out in point (c) applies; ***where the lending credit institution is the group's parent undertaking, each subsidiary and each group of subsidiaries is considered a distinct group of connected clients, provided there is no legal or economical relationship between the respective subsidiaries and subsidiary groups, that constitutes a single risk*** (…)

VIII. Leverage

A. Leverage ratio

i. Accounting Standards

It is important that there is no distortion of the leverage ratio depending on the accounting standards applied. Some EBA guidance may be necessary in order to avoid differing results.

ii. Frequency of Calculation

The leverage ratio will affect banks to a different extent with divergent implications on retail banks. Furthermore, depending on the business model a leverage ratio could create the wrong incentives and drive retail banks to either reduce their business volume or to "diversify "into higher risk business. Due to the inclusion of the liquid assets in the calculation of the ratio, the central institutions of the co-operative networks, which provide liquidity risk management services for the network members, are handicapped. The Commission is thus called upon to investigate the effect of the leverage ratio, taking into account the different business models and the diversity of the European banking sector. The leverage ratio should be a permanent instrument in pillar 2 and not in pillar1.

The reporting of the leverage ratio may be burdensome, since it has to be calculated of monthly ratios over a quarter on a consolidated and solo basis. The measurement based on the end-quarter figures should be a permanent option, not only during the transitional phase. A calculation on a monthly consolidated and solo basis would entail disproportionate costs. The calculation of a leverage ratio on a monthly basis will be an extremely heavy operation to take care of and furthermore it will be costly both in terms of cost and of internal resources for banks. At the same time, the added value of a monthly calculation remains doubtful.

Suggestion for wording –
Proposal for a Regulation
Article 416(2)

Text proposed by the Commission	*EACB Suggestion for wording*
2. The leverage ratio shall be calculated as an institution's capital measure divided by that institution's total exposure measure and shall be expressed as a percentage. ***Institutions shall calculate the leverage ratio as the simple arithmetic mean of the monthly leverage ratios over a quarter***.	2. The leverage ratio shall be calculated ***quarterly*** as an institution's capital measure divided by that institution's total exposure measure and shall be expressed as a percentage. ~~***Institutions shall calculate the leverage ratio as the simple arithmetic mean of the monthly leverage ratios over a quarter.***~~

iii. A levelled leverage ratio

The Commission shall submit by 31st of December 2016 a report on the impact of the leverage ratio, accompanied by a legislative proposal on the introduction of one or more levels of the leverage ratio. Such a leveled approach to the leverage ratio would imply to reinvent the Basel capital requirements. We therefore suggest not to consider such an approach.

Suggestion for wording –
Proposal for a Regulation
Article 482(2)(i)

Text proposed by the Commission	*EACB Suggestion for wording*
2. For the purposes of paragraph 1, the EBA shall report to the Commission by 31 October 2016 on at least the following; (…) ***(i)whether introducing the leverage ratio as a requirement for institutions would effectively constrain the risk of excessive leverage on the part of those institutions and, if so, whether the level for the leverage ratio should be the same for all institutions or should differ for different types of institution and, in the latter case, what additional calibrations would be required.***	2. For the purposes of paragraph 1, the EBA shall report to the Commission by 31 October 2016 on at least the following; (…) ***deleted***

In addition we believe that "central banks" exposures to European Central Bank related to the fulfillment of any co-operative bank's minimum reserves should be deducted from the calculation of the ratio.

iv. <u>No premature disclosure of Leverage Ratio</u>

We have serious doubts that it would be appropriate to disclose any leverage ratios, as long as details need to be clarified, differences persist and results may not be comparable (e.g. due to accounting standards). In fact, disclosure should be decided when the Commission services are to submit a report and possibly legislative proposals regarding the leverage ratio in Article 482. We therefore suggest modifying article 436(2) as follows:

Suggestion for wording –
Proposal for a Regulation
Article 436(2)

Text proposed by the Commission	*EACB Suggestion for wording*
2. EBA shall develop draft implementing technical standards to determine the contents and format of the uniform reporting template for the reporting requirement referred to in paragraph 1, the instructions on how to use such template and the frequencies and dates of reporting. EBA shall submit those draft implementing technical standards to the Commission by ***30 June 2014***. 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.	2. EBA shall develop ***<u>when appropriate</u>*** draft implementing technical standards to determine the contents and format of the uniform reporting template for the reporting requirement referred to in paragraph 1, the instructions on how to use such template and the frequencies and dates of reporting. EBA shall submit those draft implementing technical standards to the Commission by ***<u>1 January 2016.</u>*** 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.

IX. Transitional provisions

A. Transition Rules: Phasing in and Phasing out

In Basel, a clear agenda for phasing in measures and phasing out instruments was fixed. Even though the measures decided by the European Council on October 27th will lead to higher capital requirements for major banks in the medium term, we do not think that the timetable for Basel III should be changed in principle.

This timetable, obliging banks to adapt to the new capital structures even beyond tier 1 is already difficult enough for the banks. Co-operative banks normally cannot access capital markets and issue high amounts of new shares on the market. Instead they increase their capital normally by accumulating profits as retained earnings. They would therefore be handicapped by a shortened implementation period.

Any shortening of the implementation timetable will also increase the effects on the general economy. Any "race to the top" among banks, due to the fact that some national supervisors shorten the agenda or tighten technical measures beyond the CRR has to be avoided.

B. Transitional arrangements

i. Deductions of holdings currently not deducted

In some countries there are provisions that allow – under conditions – derogations from the obligation to deduct holdings in other financial institutions. While such rules are not in line with article 46 of the CRR, they meet the requirement of Article 60 of the current CRD.

It would be inappropriate, if this favorable treatment would come to an abrupt end by 1 January 2013 and full deduction were imposed. This would, however, be the consequence of Article 458(1) and 453(9) and (10).

While article 458(1) allows a transition period of five years for a progressive deduction from Common Equity (increasing 20% every year), Article 453(9) and (10) require the deduction of the remaining amount from additional Tier 1 or Tier 2. By consequence, the deduction would always be 100%

We think that this deduction should be rather phased-in a gradual, but in a steady way and therefore suggest the amendment below.

Suggestion for wording
Proposal for a Regulation
Article 453(9)(c) new

Text proposed by the Commission	*EACB Suggestion for wording*
9. Institutions shall apply the following to the residual amounts of items referred to in point (h) of Article 33(1):	9. Institutions shall apply the following to the residual amounts of items referred to in point (h) of Article 33(1): (…) ***(c) new the amounts that relate to direct or indirect holdings that have not to be deducted according to national law on 21.7.2011 but do not fulfill all conditions of Art 46 para 2 and 3 are only deducted pursuant to Art 458 para 1***

Suggestion for wording
Proposal for a Regulation
Article 453(10)(c) new

Text proposed by the Commission	*EACB Suggestion for wording*
10. Institutions shall apply the following to the residual amounts of the items referred to in point (i) of Article 33(1):	10. Institutions shall apply the following to the residual amounts of the items referred to in point (i) of Article 33(1): (…) ***(c) the amounts that relate to direct or indirect holdings that have not to be deducted according to national law on 21.7.2011 but do not fulfill all conditions of Art 46 para 2 and 3 are only deducted pursuant to Art 458 para 1.***

ii. Cut-Off Date

The cut-off date for the eligibility of financial instruments as capital, as laid down in Article 463(1) creates important problems for banks. They will not be able to raise any new capital before the adoption/entry into force of both the CRR and the relevant technical standards. As regards co-operative banks, this is not only the case for lower tier 1 and tier 2 capital, but also for equity capital, where standards on the definition of common equity will have to be adopted.

This rule seriously hampers the efforts of banks to go ahead and improve their capital basis. At the same time, it may restrict their policy regarding the extension of any loans.

The members of the EACB therefore like to re-determine the cut-off date and to fix it on the day when the CRR enters into force. This would give the necessary flexibility.

Suggestion for wording – Eligibility for grandfathering of items that qualified as own funds under national transposition measures
Proposal for a Regulation
Article 463(1)

Text proposed by the Commission	*EACB Suggestion for wording*
1. This Article shall apply only to instruments that were issued prior to ***20 July 2011*** and are not those referred to in Article 462(1).	1. This Article shall apply only to instruments that were issued prior to ***the date of the adoption of the regulation*** and are not those referred to in Article 462(1).

iii. Transitional provision for large exposures

The CRR leads to a more narrow definition of own funds. This implies that the rules for large exposures provisions become more restricted.

We therefore propose a transitional provision for existing large exposures exceeding the decreased large exposure threshold (due to new own funds definitions) under Basel III.

Suggestion for wording –
Proposal for a Regulation
Article 471(1a) New

Text proposed by the Commission	*Suggestion for wording*
1. (…)	***1. (...)*** ***1a. Following entry into force of CRR, credit institutions shall initiate all organizational and technical measures concerning exposures that were granted on a contractual basis prior to 20 July 2011 necessary to effect compliance with the large exposure rules under CRR as of 1 January 2016 at the latest. Prior to that date, the respective Member State may apply large exposure regime according to Directive 2006/48/EC.***

iv. Basel I floor

The members of the EACB appreciate that the CRR will no longer require the calculation of capital according to Basel I in order to meet the "Basel I floors as stated in Article 476. Nevertheless, we think that it is no more 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.

Suggestion for wording -
Proposal for a Regulation
Recital 56

Text proposed by the Commission	*EACB Suggestion for wording*
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	***deleted***

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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	

Suggestion for wording -
Proposal for a Regulation
Article 476

Text proposed by the Commission	*EACB Suggestion for wording*
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***

X. Grandfathering of state aid instruments

The EACB suggests that all instruments that were issued in the context of a recapitalisation scheme pursuant to European State Aid Rules should be treated the same way. This is relevant for instruments raised on the markets that were issued in conjunction with the injection of State funds under the same conditions as afforded to the Government. Institutions that did not fully rely on taxpayers' money, but raised some of the capital needed on the markets, and therefore complied with a strong incentive set by the European Commission to recur to private investments, should not be penalized by the grandfathering arrangements.

Suggestion for wording
Proposal for a Regulation
Article 462(1)(b)

Text proposed by the Commission	*EACB Suggestion for wording*
By way of derogation from Articles 24 to 27, 48, 49, 59 and 60 during the period from 1 January 2013 to 31 December 2017, this Article applies to capital instruments where the following conditions are met: (…) (b) the instruments constitute state aid	By way of derogation from Articles 24 to 27, 48, 49, 59 and 60 during the period from 1 January 2013 to 31 December 2017, this Article applies to capital instruments where the following conditions are met: (…) (b) the instruments ~~constitute~~ ***were issued within the context of a recapitalisation scheme pursuant to*** state aid***-rules***