Brussels, 27th September 2021

MM

**EACB comments on EBA draft Draft Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) and supervisory stress testing under CRD (EBA/CP/2021/26)**



**General comments**

The EACB welcomes the opportunity to comment on this EBA review of the Guidelines on the supervisory review and evaluation process (SREP) and supervisory stress testing.

We appreciate the fact that the draft revised GLs contribute to greater clarity and would allow a better understanding of supervisory decisions. However, the draft guideline contains elements that go beyond the CRD itself. We believe instead that the flexibility embedded in the level 1 legislation should be fully maintained in the GLs and not be unduly restricted, e.g. in the case of the composition of P2G.

This is even more true as there is no provision in the level 1 legislation (CRD) according to which there is a need for further clarifications on the respective legal requirements. According to Art. 16 of the EBA founding Regulation GLs should ensure a common, uniform and consistent application of the Union law. This provision by itself restricts GLs from going beyond the level 1 legislation. To ensure the necessary and appropriate legal certainty, we highly recommend maintaining the content of the GLs within the mandate outlined in the level 1 legislation.

We noted, among other aspects, that now it is explicitly foreseen on para. 360 (page 146) of the draft GLs that there can be SREP-surcharges with regard to the "business model". In this context, and more generally in the SREP framework, questionable elements are being framed within the supervisory process: while Level 1 legislation stipulates clearly on the capital requirements for banks, through the SREP supervision seems to devise a way apart to define capital requirements for banks. The SREP capital requirements are becoming less and less understandable. The effect is that banks' Pillar 2 responsibility is no longer given, and that the supervisory authority uses the Pillar 1+ approach to allocate all economic Pillar 2 risks and all other risks to Pillar 1 hard core T1 capital. Thereby economic cover funds are ignored. In this context it has to be considered that banks have no legal remedies against decisions in the SREP procedure.

With regard to the new requirements the leverage ratio-P2R/-P2G, we have an overarching request to enable supervisory authorities to handle them in a pragmatic and proportionate manner. In our view, the business models and business activities of the vast majority of institutions do not present excessive leverage risks. As a result, the establishment of a P2R-LR and/or P2G-LR should only be necessary in individual cases.

In addition, the different perspective of macroprudential and/or systemic buffers should not overlap with the microprudential SREP capital add-ons as these dimensions were clearly separated by co-legislators in the CRD text.

Besides, the planned date of application of the revised SREP guidelines is not clear. Since finalization and provision of translations can probably not take place until early 2022, the guidelines should not become effective until January 1, 2023: i.e. first application in the 2023 supervisory cycle.

Finally, we would also note that there seems to be a formal redundance when it comes to supervisory measures addressing operational risk deficiencies in para. 566. a. ("require the institution to restrict or limit its operations") of the draft GLs which is also included under 566. f. ("restrict or limit the business, operations



**EACB AISBL** – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels
Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19
www.eacb.coop • e-mail : secretariat@eacb.coop

or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution; and/or"). This seems an unnecessary duplication, para. 566. a. should thus be removed.

Q1 *How could the guidelines be further simplified in a way that appropriate focus of assessment is allowed while preserving the comprehensiveness of the assessment and ensuring that all aspects are sufficiently covered?*

We welcome the efforts made to bucket the institutions into four different categories in the SREP GL. We consider this as an important step to ensure the application of the principle of proportionality at all levels. However, from our point of view, the effort for an appropriate application of the principle of proportionality has not fully achieved the intended results. Greater differentiation between the categories applicable to small institutions (category 3 and 4) would be necessary, which should result – as suggested in the description of the Policy Option II (p. 252) – in a reduction of the burden for those small and non-complex institutions that could be reclassified from Category 3 to Category 4.

In the current framework, indeed, there are no substantial differences in treatment between institutions belonging to Category 3 and 4 (e.g. the assessment of all SREP elements is set every three years for both categories). For instance, a longer period could be envisaged, compared to the three years currently foreseen, for the exercise of the SREP assessment on small and non-complex institutions (Category 4).

It would also be important to introduce a clearer distinction between categories 2 (medium to large institutions), and 3 (small to medium institutions), to avoid that medium-sized institutions could be confused and pulled into Category 2.

Besides, the CRR II not only differentiates between "small and non-complex" institutions, but also makes distinctions based on capital market orientation, which results in additional relief (at least with regard to disclosure) – the distinction could also be made in these Guidelines.

In principle, we agree with the importance of making an effort to simplify the EBA guidelines, but this should not translate into another form of "one size fit all" approach of the legislation.

The starting points for a leaner approach to SREP are mentioned in paragraphs 54, 56 and 58. However, these are not sufficient, especially since table 1 requires an "assessment of all SREP elements (at least)" every three years, even for smaller institutions. It remains unclear which of the numerous individual aspects in Titles 5, 6 and 8 (which are multiplied again by the references to further EBA guidelines), for example, supervisors may omit or combine when assessing Category 3 and Category 4 institutions. Paragraph 54 merely refers to Article 97 (4a) CRD V. However, the EBA was given the mandate to specify criteria on how supervisory authorities could implement adapted (unified) procedures for institutions with a similar risk profile. In our view, this is not achieved in the current text.

All applicable standards and guidelines that are currently in force should be known to supervisors as well as to institutions. It is therefore appropriate to add cross-references to them. However, a repetition of contents from other guidelines in the SREP guidelines (e.g. as in paragraph 170) should be avoided. The SREP GL would be clearer without these repeated references. In case EBA does see a need to give an overview of the relevant guidelines these could be stated in the form of a pure list or table at the beginning of the document.

Q2 *Do you think that the proposed overall framework for setting additional own funds requirements appropriately incorporates the ICAAP information and estimates?*

No. According to the current draft, there is unfortunately only a loose link between the ICAAP as the basis for the supervisory analysis and the final P2R. According to the previous concept, the ICAAP is to be used as the (also quantitative) basis for the SREP. Such a fundamental approach still makes sense from our perspective. This is instead now to be replaced by formulations such as "take into consideration", "use" or "support". This would create a rather arbitrary use of ICAAP in SREP that goes considerably too far and opens the door for supervisors to establish very different approaches for "their" SREP. The idea thus stands in the way of a consistent European approach to the SREP by the competent authority responsible and can have a distorting effect on competition. The degree of freedom created here – probably in order, among other things, to give supervisory benchmark models wide scope (paragraph 369 c.) – clearly goes too far.

When setting the P2R, supervisory authorities became over-reliant on qualitative assessments and supervisory judgement. This might hinder the legal soundness of their decisions. When comparing the legal requirements for the P2R with the actual supervisory practice and the approach outlined by the EBA, a huge gap occurs. While the co-legislators have clearly differentiated between quantitative, risk driven requirements reflected in the P2R and qualitative findings to be addressed by the SREP findings process, the EBA and supervisors have not. However, Art 104a CRD V clearly states that the P2R shall only be set for risks or elements of risks not or not sufficiently covered by the Pillar 1 capital requirements. Only the difference between the actual risks and corresponding requirements, and the Pillar 1 coverage can be required as P2R. Here, the ICAAP can provide the necessary quantitative information to identify those capital needs. These can then be transposed into basis points requirements resulting in a well-founded (from an economic as well as a legal perspective) approach to P2R. To our knowledge currently (for example) the Hungarian supervisory authorities follow this approach in setting their P2R.

We think that there is a general problem with supervisory approaches that can be deemed “Pillar 1+ approaches”, namely trying to include the economic banking view into the regulatory Pillar 1 view. Thereby eligible cover pools are constantly reduced, and risks permanently doubled up without a clear differentiation in the scenario view between the ongoing banking supervision and banking resolution. This is accompanied by a constant increase in the complexity of the measurement methods and the inclusion of new risk considerations. This permanently increases the implementation costs for banks, apart from the fact that it is hardly possible to keep an overview of the numerous requirements. There are already studies that show that from a certain point onwards, the overload of regulation can have a negative impact on the norm addressee.

The vast majority of banks has been investing for decades in the reliability of their ICAAPs. It has been ever since an important goal of the supervisors to strengthen institution's ICAAPs. The ICAAP should hence form the main starting point for the determination of the P2R. Only ICAAPs that are overall not sensitive and reliable should be supplemented by supervisory benchmarks. In all other cases benchmarks would lead to overly conservative measures because of their unprecise nature. We rather suggest that EBA should describe concretely in what cases ICAAPs are deemed overall unreliable and benchmarks are introduced while in all other cases the ICAAP shall be the main starting point for the determination of P2R. From our perspective, the information sources mentioned in paragraph 369 should only be used in a supplementary manner.

The primary use of the ICAAP should be retained.

Q3 *Do you agree with the proposed clarifications on the assessment of the risk of excessive leverage?*

In general, we recommend that supervisory authorities are allowed to handle the assessment of excessive leverage risks in a pragmatic manner. In our view, these risks are not present in the business models and business activities of the majority of institutions, and the determination of a P2R-LR and/or P2G-LR should only become necessary in individual cases as a result.

Additional information requirements, a separate supervisory leverage ratio stress test or the like are likely to be necessary – if at all – only for institutions where the supervisory assessment reveals material indications of the existence of excessive leverage risks. For all other institutions, the leverage ratio-related requirements should be implemented as leanly as possible so as not to produce unnecessary additional work for supervisory authorities and institutions. The reference in paragraph 397 that existing sources of information should be used should be given more prominence.

In addition, it should be made clearer in the relevant requirements that a P2R-LR and P2G-LR greater than zero need not be set by default (e.g., by adding "where necessary / applicable" in paragraphs 394, 398, 404 b, 409 b, 411, and 424). A P2R-LR should only be applied to outlier institutions with a demonstrable risk of excessive leverage and therefore can only be the exception and may not be the rule. In our view, the competent supervisory authorities should also only take measures to mitigate the risk of excessive leverage if it can be demonstrated that this could have a significant negative impact on the sustainability and viability of the business model and this potential risk inherent in the business model is not already addressed by other measures taken by the institution or via Pillar 1. In this context, the competent supervisory authority should in principle act neutrally towards business models. This should be clarified in paragraphs 392/393.

*Q4 Do you think that the assessment of dimensions and indicators described in this explanatory box would also be relevant for the assessment of the risk of excessive leverage? Are there any other elements / indicators that you are using in the assessment of this risk?*

No, further indicators do not seem to be appropriate. We therefore welcome the fact that the examples discussed in the explanatory box are not included in the draft SREP Guideline, as none of them can be subsumed under the relevant definition of "risk of excessive leverage" in Article 4 (1) 94 CRR. In our view, there is no meaningful connection to "leverage risk" as defined in the CRR. Moreover, the aspects mentioned are already taken into account in other instances.

*Q5 Can you provide examples of situations which in your view might require CET1 instead of other capital instruments to cover potential losses in relation to P2R and P2R-LR?*

In our view a clearer distinction between which capital types are appropriate for covering P2R vs. P2G would be beneficial (see also Q7 which this comment relates to as well). Since the purpose of P2R is to mitigate risks not sufficiently covered in Pillar 1 capital requirements we find it consistent that P2R is composed of the same capital mix as in Pillar 1, that is 4.5/8 CET1, 1.5/8 additional Tier 1 and 2/8 Tier 2 capital.

However, regarding P2G, it would seem logical to differentiate the CET1-percentage stress depletion between effects stemming from impairments vis-à-vis risk weighted assets. In a materialization of a macroeconomic adverse scenario, it is likely that both impairments and risk weighted assets would increase simultaneously. Any increments in impairments would however need to be offset by CET1 as loss absorption via P&L whereas effects on the CET1-percentage depletion stemming from increments in risk weighted assets should be allowed to be mitigated via the same capital mix as Pillar 1 and P2R.

*<u>Composition of additional own funds requirement to address the risk of excessive leverage</u>*

Para. 398 stipulates that "*Competent authorities should add the additional own funds requirement to address the risk of excessive leverage to the minimum leverage ratio Tier 1 requirement. In order to meet this additional requirement institutions should also be able to use any Tier 1 capital.*" According to para. 399 competent authorities may even require institutions to cover additional own funds requirements with higher quality of capital than that referred to in paragraph 398.

Similarly to what said on the composition of the P2G (see Q7) we do not see a legal basis for the mandatory Tier 1 requirement. On the contrary Art. 104a (3) and (4) CRD V refer to "at least three quarters of the additional own funds requirement shall be met with Tier 1 capital", meaning that one quarter could be fulfilled with Tier 2 – i.e. there would be no obligation to use exclusively Tier 1 capital.

Moreover, we do not see the general need for stricter requirements (in the sense of higher CET1 ratios). Stricter requirements should be limited to well-founded individual cases, as provided in the text of the Directive.

*Q6 Would you consider the introduction of a standardised template for the communication to the supervised institution of the outcome of the SREP to be beneficial?*

*Transparency*

We appreciate the adjustments proposed regarding transparency as they will not only have a positive impact regarding the understanding for additional capital requirements but also serve as an incentive for improvement. As competent authorities will provide more detailed and better explanations and justifications, institutions will have a deeper understanding and greater possibilities to improve where needed. Therefore, we encourage the competent authorities to closely consider Para. 414 of the revised Guidelines and Art 104a (5) CRD V and to make a clear allocation of the elements of the capital add-on to the SREP-elements and main risk drivers.

Any standardised and transparent documentation of the outcome (especially the derivations that led to the outcome) is welcomed.

Standardised templates for the communication outcome of the SREP shall outline the risks identified in the SREP process, the adequate capital requirement based on solid economic and statistical methods, the coverage in Pillar 1 capital requirements and macro-buffers and the difference between adequate capital and coverage in other buffers. The sum of the differences then has to equal the amount of capital required as P2R. This ensures transparency as legally required and gives the institutions the necessary information to steer and adjust their risks and resulting capital requirements. Without this information, institutions are in a situation where their capital requirements are set in a black box without the opportunity to influence and steer their capital.

Competent authorities should be encouraged to provide a structured template for the communication of P2R, P2R-LR, P2G and P2G-LR. Main driver of the structure of such templates should be transparency. Institutions need detailed information on the basis/methods used to determine the Pillar 2 capital requirements in order to be able to deal with them appropriately. That is, institutions must be informed about what risk types, deficiencies, benchmarks, etc. contribute and to what extent to the given determination of P2R, etc.

If all items/risks to be examined were explicitly listed with corresponding references, a comparison of the previous year and the traceability by the institutions would be facilitated. Overall, more transparency on benchmarking across institutions and benchmarking results should be provided, where applied.

*Q7 What are your views on the guidance for setting P2G and P2G-LR? Is it sufficiently clear?*

As described above, from our point of view, the question should not be whether it is "sufficiently clear" but "why necessary". There is a risk that supervisors would this way circumvent the legislative processes. There is a legal provision in the level 1 legislation (CRR) for calculating the leverage ratio and nevertheless the banking supervision foresees in a SREP guideline that capital add-ons to the leverage ratio for "*potentially elevated vulnerabilities, not captured by the own funds requirement*" can be prescribed. Formulations like the following one do not foster improved transparency: "*should determine the additional own funds requirements to address the risk of excessive leverage as the difference between the capital considered adequate to cover the risk of excessive leverage and the leverage ratio own funds requirements as set out in Article 92(1), point (d) of Regulation (EU) No 575/2013*". By incorporating such provisions into the P2G- and P2R-regime the regulatory complexity further increases.

*Setting of P2G*

The approach proposed in the GLs, specifically para. 422 ff, is not sufficiently reflecting the requirements of Art 104b CRD V. As stated in para. 1 of Art 104b CRD V the institutions capital shall be set at an adequate level of own funds to cover all risks the institution is exposed to. This shall ensure that the institution's own funds can absorb potential losses resulting from stress scenarios, including those identified under the supervisory stress tests. The level of internal capital available for an institution, including supervisory stress testing, shall be reviewed by the competent authorities. This review shall then be used to determine the overall level of own funds considered appropriate by the competent authority. The guidance shall then be set by deducting any Pillar 1 and Pillar 2 capital requirements already considered.

Thereby the co-legislators clearly emphasized that, first of all, the basis for any guidance on additional own funds shall be the internal capital adequacy prosses. The ICAAP itself typically considers relevant stress scenarios of the institutions. However, to have comparable results additionally, the supervisory stress tests shall be considered. This, however, is not represented in the draft GLs. They rather stipulate that "*P2G is the amount of capital that should be set to reach the overall level of own funds considered appropriate under the SREP and the outcomes of supervisory stress tests.*" Thereby, any internal capital adequacy is neglected entirely.

Secondly, the GLs stipulate that the level of P2G should protect against potential breaches of the TSCR in the adverse scenario (para. 421, 423). However, there is no reference in Art 104b CRD V to the TSCR at all. The CRD V rather states that the P2G shall only be own funds requirements exceeding other capital requirements (Art 104b para. 3 CRD V). As all own fund requirements are held for unexpected losses (while expected losses are covered in the pricing calculations) they are implemented to cover for any unexpected stress situation. Therefore, the P2G can only be seen as additional requirements in case neither the own funds requirements according to Pillar 1 including CBR nor the P2R are sufficient to cover for stress events. An interpretation that the P2G according to Art 104b CRD V, however, shall protect against potential breaches of the TSCR in the adverse scenario is not supported by the legal texts and must therefore be disregarded.

Third, the bucketing approach by itself is not a feasible approach to determine the P2G as the mathematical derivation from stress test results. Without considering the capital requirements already covered in the Pillar 1 and the P2R the approach would be *contra legem*. As outlined already above, the CRD V in Art. 104b para. 3 second sub-para. states that the guidance on additional own funds shall be the own funds exceeding the relevant amount of own funds in Pillar 1 and P2R. Therefore, a coherent approach must consider these own funds already held and can induce a P2G only in cases that the combined buffer requirements aren't able to absorb the losses in case of a stress scenario. This stress scenario can be taken from either the internal stress tests or the external stress tests. Therefore, the P2G can only be set in case the institutions are not able to absorb losses in stress situations with their Pillar 1 and P2R. This is correctly reflected in the GLs when stating that the P2G shall be set at a level appropriate to cover at least the anticipated maximum stress impact (para. 429).

*Composition of P2R and P2G*

We welcome that the composition of the P2R is set in accordance with Art 104a (4) CRD V (at least three quarters of the additional own funds requirement shall be met with Tier 1 capital and at least three quarters of the Tier 1 capital shall be composed of Common Equity Tier 1 capital), however we would like to raise some points regarding an adequate implementation for the P2G.

The SREP GLs state that the P2G is expected to be on top of the OCR and to be met with CET1 eligible own funds (see para. 434-437). We believe the SREP GL should make full use of the flexibility given by the CRD as Art. 104b does not require the mandatory use of CET1 to meet the P2G by implementing the CRD wording accordingly. Therefore, we advocate for adjusting the wording of para. 437 to allow meeting the P2G with other elements of own funds. According to the legal framework, it should be possible to use own funds elements other than CET1 for compliance with P2G. If the co-legislators had aimed for a similar approach for the P2G as for the P2R, they would have stated this approach explicitly in Art 104b along the lines of Art 104a CRD V. We can assume that the co-legislators agreed on the CRD V also having in mind the SREP Guidelines and the CET1 only requirement regarding P2G. Therefore, if the co-legislators would not have wanted certain "own-funds" items to be eligible, they would have made it clear in Art. 104b CRD V.

More specifically, it would seem logical to differentiate the CET1-percentage stress depletion between effects stemming from impairments vis-à-vis risk weighted assets. In a materialization of a macroeconomic adverse scenario, it is likely that both impairments and risk weighted assets would increase simultaneously. Any increments in impairments would however need to be offset by CET1 as loss absorption via P&L whereas effects on the CET1-percentage depletion stemming from increments in risk weighted assets should be allowed to be mitigated via the same capital mix as Pillar 1 and P2R.

Moreover, the guidance for setting P2G-LR is not clear. We suspect that the risk in regard to LR is overestimated and the P2G-LR is calibrated too high. In par. 423 is stated, that P2G-LR should protect against the breach of TSLRR in the adverse scenario. On the other hand, it is stated in par. 429 that the maximum stress impact should be covered. Regardless of how far the starting point was above the minimum requirements or how far the minimum requirements were exceeded in the stress, the outcome would be materially different.

In addition, as described in par. 434, the P2G-LR could not be offset against the CCB like the (gross) P2G. This could lead to a disproportionate consideration of the stress effect in P2G-LR. We ask to add the clarification, that in general there is no room for (non-institution specific) minimum (floor) P2G and P2G-LR.

For instance, when looking at national implementations of CRD V, in Austria the CRD V was transposed into national law via an amendment of the BWG, the Austrian Banking Act (BWG – Bankwesengesetz) as amended by BGBl I 98/2021 which prescribes the Guidance on additional own funds in § 70c "Aufsichtliche Erwartung" (Aufsichtliche Erwartung can hereby be translated as supervisory expectation). The accompanying explanations (ErläutRV 663 BlgNR 27. GP 25) state that the supervisory expectation for additional own funds pursuant to § 70c constitutes an additional capital adequacy expectation that is necessary to absorb possible losses from special ("advanced") stress scenarios, including the supervisory stress tests, without this resulting in non-compliance with the minimum own funds requirement.

It has to be emphasized that the accompanying explanations clearly define that the competent authorities will have to determine what kind of own funds institutions may use to comply with the P2G (and not only CET1, which is perfectly in accordance with Art 104b CRD V). Working papers from the CRD review show that the majority of Member States had supported the introduction of a "soft" recommendation with regard to P2G. The requirement for exclusive CET1 backing within the SREP Guidelines is therefore not in line with the will of the EU legislator and lacks a legal basis. This tightening specification should be deleted and the wording should be based on own funds in accordance with CRD V.

Moreover, we would like also to underline that the P2G is by its nature a very conservative approach to address a possible breach of the SREP total capital requirement (TSCR) in an adverse stress scenario. The need for a P2G within that conservative view should only be used in exceptional cases, and all kinds of own funds can be used in a going concern perspective to avoid severe difficulties.

Not only para. 437 thus should be amended but especially also Annex 2. Key features and differences between P2R and P2G, too. The table is stating that the quality of capital for P2G is CET1 only and, as described above, such an approach needs to be revised.

We do not question the supervisory practice to require CET1 only for compliance with P2G, but the Level 1 provisions changed fundamentally with the legal codification of P2G in Art. 104b CRD V. Therefore, we believe that it is excessive of EBA to stipulate that only CET1 can be used for P2G compliance, contradicting the clear wording of CRD V "*guidance on additional own funds*" and not "*guidance on additional CET1*".

We furthermore believe that the EBA, in prescribing that only CET1 can be used to comply with P2G, is going beyond the level 1 mandate. The CRD V, in fact, clearly leaves this decision on the composition of P2G to the discretion of the competent authorities.

*<u>Buffers / P2R and P2G</u>*

Para. 400 states, that "*competent authorities should not set additional own funds requirements or other capital measures (including P2G) where the same risk is already covered by specific capital buffer requirements. Any additional own funds requirements or other capital measures should be institution-specific and should not cover macroprudential or systemic risks.*"

At the same time, para. 434 still mentions that "*while no overlap is in principle expected between P2G and the countercyclical capital buffer (CCyB), competent authorities should, in exceptional cases, offset P2G on a case-by-case basis against the CCyB based on the consideration of underlying risks covered by the buffer (…)*"

We believe that this passage should be redrafted, as there should never be any overlapping between buffers and additional capital requirements, making a case-by-case decision by competent authorities in this respect redundant. This is also stated in recital 14 of the CRD V "*The institution-specific nature of additional own funds requirements **should prevent their use as a tool to address macroprudential or systemic risks**. (…)*"

**Timeframe for transforming P2G into P2R**

According to the revised para. 388 of the Guidelines, competent authorities should set additional own funds requirements to cover the additional risk no later than two years after the breach of guidance, where an institution repeatedly fails to establish or maintain an adequate level of own funds to cover the guidance.

Although competent authorities may postpone that decision due to economic or market conditions or institution-specific circumstances – a possibility which we appreciate – we believe that a timeframe of two years is too short and should be extended to four years.

If P2G is transformed into P2R too early, its character as of "guidance" given by the CRD will be lost and P2G becomes de facto binding and understood as such. To establish an adequate level of own funds to cover the guidance, both asset-side and liability-side balance sheet measures that take time to be prudently executed may be required, which is made much more difficult by a two years horizon.

In this vein, para. 427 b) of the revised Guidelines stipulates that competent authorities may determine P2G and P2G-LR only every second year instead of annually. Therefore, we believe at least two P2G determination cycles should pass before P2G is transformed into P2R in any case, which means four years where an institution repeatedly fails to cover P2G.

We recommend redrafting para. 388 as follows:

"388. Where an institution repeatedly fails to establish or maintain an adequate level of own funds to cover the guidance communicated in accordance with Article 104b(3) of Directive 2013/36/EU, competent authorities should set additional own funds requirements to cover that additional risk not later than ~~two~~ four years after the breach of guidance. Competent authorities may postpone that decision where they allow institutions to operate below the level of guidance due to economic or market conditions or institution-specific circumstances, in line with paragraphs 582 and 583."

*Q8 What are your views on possible disclosures, which may be attached to P2G and/or ranges of buckets in case they are identified?*

Xxx

*Q9 What are your views on the capital instruments potentially used to cover losses in relation to P2G-LR? Please provide the rationale or specific examples for your views.*

The structure of the leverage capital requirement as a Tier 1 requirement should also be followed for the P2G LR.

From a conceptual point of view, we fully agree, that meeting P2G-LR with Tier 1 keeps consistency within the leverage ratio stack based on Tier 1 and would leave the calculation coherent and straightforward. Hence, we ask for clarification in para. 437 that P2G-LR is expected to be met with Tier 1 capital.

**Contact:**

For further information or questions on this paper, please contact:

- Mr. Volker Heegemann, Head of Department (v.heegemann@eacb.coop)
- Mr. Marco Mancino, Deputy head of Department, Banking Regulation (m.mancino@eacb.coop)