

Recommendation

on the preservation of core Tier 1 capital during the transition to the Capital Requirements Directive/Capital Requirements Regulation framework



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1. Executive Summary

1. As part of a suite of measures to restore confidence in the EU banking sector the EBA, in December 2011, issued a recommendation to national supervisory authorities indicating that participating EU banks should raise their core Tier 1 ('CT1') ratio. The objective of the recommendation was to ensure sufficient capital against unexpected losses in case the economic situation deteriorated further.
2. The Capital Requirements Directive (CRD)¹ and Capital Requirements Regulation (CRR)² package has changed the legal framework for assessing capital levels and the EBA has therefore decided that the capital buffers established by its December 2011 recommendation should be replaced by a new measure on capital preservation.
3. According to the capital preservation requirement, the competent authorities should ensure that banks maintain a capital floor in terms of a nominal level of monetary units (e.g. euros) of core Tier 1 capital. The nominal floor corresponds to the amount of capital needed for meeting the requirements set in the December 2011 Recommendation as at 30 June 2012. Wherever banks' capital levels fall below the nominal floor, banks will be expected to produce credible plans for its restoration. Only limited waivers will be granted on a case by case basis, and discussed in depth within colleges of supervisors, to accommodate restructuring plans or specific 'de-risking' programmes. Competent authorities may also waive the nominal floor requirement where it is deemed capital is in excess of that needed to meet on a continuous basis the minimum Common Equity Tier 1 requirements and the capital conservation buffer computed under fully implemented CRD/CRR rules. Such decisions should be the responsibility and decision of the relevant competent authority after discussion and consultation with the EBA and any relevant college of supervisors.
4. Competent authorities are recommended to assess banks' capital plans for the transition to CRD/CRR implementation and application, including consideration of the phasing-in and the final level of the new requirements. To this end, banks should be required to submit their capital plans together with the monitoring templates at Annexes III and IV to national authorities by 29.11.2013. The capital plans and templates will be shared with the EBA. The national authorities, in close cooperation with other relevant competent authorities within colleges of supervisors as appropriate and with the EBA, should assess credit institutions' capital plans for transition to the CRD/CRR full implementation. When reviewing capital plans, national authorities should discuss and challenge banks' assumptions and consider the impact of stress events on the viability of the plans. As the result, measures to maintain capital, such as restrictions on dividends and other variable payments, and any other measures considered to be necessary and appropriate by the competent authorities in consultation with the EBA for addressing any deficiencies in the plans should be applied.

1 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

2 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012

2. EBA Recommendation on the preservation and supervisory oversight of transitional levels of nominal core Tier 1 capital

Status of this Recommendation

5. This document contains a recommendation issued pursuant to Article 16 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC ('the EBA Regulation'). In accordance with Article 16(3) of the EBA Regulation, competent authorities must make every effort to comply with the recommendation.
6. The recommendation sets out the EBA's view of appropriate supervisory practices within the European System of Financial Supervision and of how Union law should be applied in a particular area. The EBA therefore expects all competent authorities to whom the recommendation is addressed to comply with it. Competent authorities to whom the recommendation applies should comply by incorporating it into their supervisory practices as appropriate (e.g. by amending their legal framework or their supervisory processes).

Reporting Requirements

7. According to Article 16(3) of the EBA Regulation, competent authorities must notify the EBA as to whether they comply or intend to comply with this recommendation, or otherwise with reasons for non-compliance, by 22 September 2013. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form provided in Annex V to compliance@eba.europa.eu with the reference 'EBA/REC/2013/03'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities.
8. Notifications will be published on the EBA website, in line with Article 16(3).

THE BOARD OF SUPERVISORS OF THE EUROPEAN BANKING AUTHORITY,

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

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

Whereas:

- (1) The EBA’s Board of Supervisors has decided that the core Tier 1 capital ratio established by its December 2011 recommendation should, in the context of the changing legal landscape during the Union’s gradual transition to the full framework adopted in the Capital Requirements Directive (CRD)³ and Capital Requirements Regulation (CRR)⁴, be replaced by a new measure on capital preservation for the Union’s main credit institutions.
- (2) Although market conditions have improved since the EBA issued its recapitalisation recommendation of 8 December 2011 (EBA/REC/2011/1), the preservation of a transitional level of nominal capital is necessitated and justified by the ongoing volatility in the financial markets. There is a need to introduce effective measures to preserve capital and thereby maintain stability in the banking sector. Furthermore, credit institutions are expected to further strengthen their capital levels to comply with the stricter requirements set out in the new legislative requirements, which will be gradually phased in.
- (3) Since, during the transition period, minimum capital requirements might be less stringent than those set out in the EBA’s December 2011 recommendation, credit institutions should be required to preserve their capital levels. Under this new capital preservation measure, supervisors should monitor a nominal amount denominated in the relevant reporting currency (e.g. euros) of core Tier 1 capital corresponding to the amount of capital needed for meeting the requirements set in the 8 December 2011 Recommendation as at 30 June 2012. This nominal floor should be actively monitored by the consolidating supervisor, in conjunction with the EBA and supervisory colleges, to ensure that it is maintained.
- (4) The competent authorities, in close cooperation with other relevant competent authorities within colleges of supervisors as appropriate and with the EBA, should assess credit institutions’ capital plans for the transition to the full implementation and application of CRD/CRR. When reviewing capital plans, national authorities should discuss and challenge credit institutions’ assumptions and consider the impact of stress events on the viability of the plans. As a result, measures to maintain capital, such as restrictions on dividends and other variable payments and any other measures considered to be necessary and appropriate by the competent authorities and the EBA for addressing any deficiencies in the plans should be applied.
- (5) Competent authorities should be able to waive the nominal floor in cases of restructuring plans and specific de-risking programs and for those banks whose Common Equity Tier 1 level is above the minimum capital requirements and the capital conservation buffer computed under fully implemented CRD/CRR requirements.

3 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

4 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012

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- (6) This recommendation should set out the monitoring templates to be submitted by credit institutions in order to report the major components of their capital positions and compliance with the applicable capital levels.
 - (7) Since this recommendation builds on recommendation EBA/REC/2011/1 in the light of supervisory experience and the changes adopted in CRD/CRR and is targeted at a limited number of credit institutions, it is not necessary to carry out public consultation.
 - (8) This Recommendation should be published on the EBA's website.

HAS ADOPTED THIS RECOMMENDATION:

1. The competent authorities listed in Annex I ("the competent authorities"), as the national home state authorities with lead responsibility for supervising the credit institutions listed within Annex II ("the credit institutions"), are recommended to ensure that the credit institutions maintain on an ongoing basis until such time as this recommendation is amended, repealed or cancelled, the nominal level of core Tier 1 capital described in paragraph 2. The competent authorities should do this through their review, evaluation and determination of whether the own funds held by the credit institutions ensure a sound management and coverage of their risks.
2. The competent authorities are recommended to ensure that the credit institutions maintain a nominal floor of capital denominated in the relevant reporting currency of core Tier 1 capital as defined in Recommendation EBA/REC/2011/1 corresponding to the amount of capital needed as at 30 June 2012 to meet the requirements set out in Recommendation EBA/REC/2011/1. Contingent capital instruments which comply with the EBA's common termsheet and were issued before 30 June 2012 to meet the ratio remain eligible for this purpose only.
3. The competent authorities are recommended to assess credit institutions' capital plans. These plans should explain how credit institutions will comply with the requirements of the Capital Requirements Directive (CRD) and Capital Requirements Regulation (CRR) and should cover the whole transitional period until full implementation and application of those legislative acts.
4. Competent authorities may waive the nominal floor requirement where it is determined that capital is in excess of that needed to meet the minimum Common Equity Tier 1 requirements and the capital conservation buffer computed under fully implemented CRD/CRR requirements. Such decisions should be the responsibility and decision of the relevant competent authority after discussion and consultation with the EBA and in any relevant college of supervisors.
5. In addition, the competent authorities are recommended to require credit institutions to present plans for the restoration of the nominal floor referred to in paragraph 2 where the absorption of losses has caused its depletion, and to keep the colleges of supervisors and the EBA informed of the progress in enforcing the plans.
6. The competent authorities are further recommended to:
 - a) require the credit institutions to submit by 29.11.2013 suitable capital plans and monitoring templates in accordance with the templates in Annexes III and IV showing that appropriate levels of capital are being preserved in order to ensure that the transition to full implementation and application of CRD/CRR is achieved in an appropriate and timely manner;
 - b) discuss and challenge credit institutions' assumptions and consider the impact of stress events on the viability of their plans;
 - c) defer their agreement to the capital plans until these have been reviewed, shared and consulted on with the EBA and, within relevant colleges of supervisors;

- d) take a coordinated supervisory approach, in consultation with relevant competent authorities and the EBA, to the granting of waivers from the nominal floor requirement as part of restructuring plans and for specific de-risking programmes. Such waivers should only be granted in cases where the restructuring plans or de-risking programmes lead to a substantial reduction of risk⁵;
- e) take appropriate measures, in consultation with relevant competent authorities and the EBA, to address deficiencies in the capital plans if the viability of these plans is in doubt;
- f) review credit institutions' capital plans at least annually, in consultation with the EBA and with other relevant competent authorities within colleges of supervisors as appropriate.

7. This recommendation shall be reviewed in due course and in any event by 31 December 2014.

8. This recommendation shall apply from 22 July 2013. The recommendation of 8 December 2011 (EBA/REC/2011/1) is revoked from the same date, except for the purpose of applying paragraph 2 of this recommendation.

Done at London, 22 July 2013

Andrea Enria
Chairperson, EBA

Annex I: Competent authorities

| Country | Competent Authority |
|---------|--|
| AT | Finanzmarktaufsicht, FMA (Financial Market Authority) |
| BE | National Bank of Belgium (NBB) |
| CY | Central Bank of Cyprus |
| DE | Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) |
| DK | Finanstilsynet (Danish Financial Supervisory Authority) |
| ES | Banco de España (Bank of Spain) |
| FI | Finanssivalvonta (Finnish Financial Supervisory Authority) |
| FR | Autorité de Contrôle Prudentiel, ACP (Prudential Control Authority) |
| GB | Prudential Regulation Authority |
| HU | Pénzügyi Szervezetek Állami Felügyelete (Hungarian Financial Supervisory Authority) |
| IE | Central Bank of Ireland |
| IT | Banca d'Italia (Bank of Italy) |
| LU | Commission de Surveillance du Secteur Financier, CSSF (Commission for the Supervision of Financial Sector) |
| MT | Malta Financial Services Authority (MFSA) |
| NL | De Nederlandsche Bank, DNB (National Bank of Netherlands) |
| NO | Finanstilsynet (Financial Supervisory Authority of Norway) |
| PL | Komisja Nadzoru Finansowego (Polish Financial Supervision Authority) |

⁵ Ordered deleveraging processes already formally agreed with international organisations or EU institutions before 31.08.2013 should, if submitted to and monitored by the competent authority, also be allowed. The same conditions would apply in some cases to formal restructuring plans.

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| PT | Banco de Portugal (Bank of Portugal) |
| SE | Finansinspektionen (Swedish Financial Supervisory Authority) |
| SI | Banka Slovenije (Bank of Slovenia) |

Annex II: Credit institutions

| Code | Banks' names |
|-------|---|
| AT001 | ERSTE GROUP BANK AG |
| AT002 | RAIFFEISEN ZENTRALBANK ÖSTERREICH (RZB) |
| BE005 | KBC BANK |
| CY006 | CYPRUS POPULAR BANK PUBLIC CO LTD |
| CY007 | BANK OF CYPRUS PUBLIC CO LTD |
| DE017 | DEUTSCHE BANK AG |
| DE018 | COMMERZBANK AG |
| DE019 | LANDESBANK BADEN-WÜRTTEMBERG |
| DE020 | DZ BANK AG DT. ZENTRAL-GENOSSENSCHAFTSBANK |
| DE021 | BAYERISCHE LANDESBANK |
| DE022 | NORDDEUTSCHE LANDESBANK -GZ |
| DE023 | HYPO REAL ESTATE HOLDING AG, MÜNCHEN |
| DE025 | HSB NORDBANK AG, HAMBURG |
| DE026 | LANDESBANK HESSEN-THÜRINGEN GZ, FRANKFURT |
| DE027 | LANDESBANK BERLIN AG |
| DE028 | DEKABANK DEUTSCHE GIROZENTRALE, FRANKFURT |
| DE029 | WGZ BANK AG WESTDT. GENO. ZENTRALBK, DDF |
| DK008 | DANSKE BANK |
| DK009 | JYSKE BANK |
| DK010 | SYDBANK |
| DK011 | NYKREDIT |
| ES059 | BANCO SANTANDER S.A. |
| ES060 | BANCO BILBAO VIZCAYA ARGENTARIA S.A. (BBVA) |
| ES062 | CAJA DE AHORROS Y PENSIONES DE BARCELONA |
| ES064 | BANCO POPULAR ESPAÑOL, S.A. |
| FI012 | OP-POHJOLA GROUP |
| FR013 | BNP PARIBAS |
| FR014 | CREDIT AGRICOLE |
| FR015 | BPCE |
| FR016 | SOCIETE GENERALE |
| GB088 | ROYAL BANK OF SCOTLAND GROUP PLC |
| GB089 | HSBC HOLDINGS PLC |
| GB090 | BARCLAYS PLC |
| GB091 | LLOYDS BANKING GROUP PLC |
| HU036 | OTP BANK NYRT. |

| Code | Banks' names |
|-------|---|
| IE037 | ALLIED IRISH BANKS PLC |
| IE038 | BANK OF IRELAND |
| IE039 | PERMANENT TSB plc |
| IT040 | INTESA SANPAOLO S.P.A |
| IT041 | UNICREDIT S.P.A |
| IT042 | BANCA MONTE DEI PASCHI DI SIENA S.P.A |
| IT043 | BANCO POPOLARE - S.C. |
| IT044 | UNIONE DI BANCHE ITALIANE SCPA (UBI BANCA) |
| LU045 | BANQUE ET CAISSE D'EPARGNE DE L'ETAT |
| MT046 | BANK OF VALLETTA (BOV) |
| NL047 | ING BANK NV |
| NL048 | RABOBANK NEDERLAND |
| NL049 | ABN AMRO BANK NV |
| NL050 | SNS BANK NV |
| NO051 | DNB NOR BANK ASA |
| PL052 | PKO BANK POLSKI |
| PT053 | CAIXA GERAL DE DEPÓSITOS, SA |
| PT054 | BANCO COMERCIAL PORTUGUÊS, SA (BCP) |
| PT055 | ESPÍRITO SANTO FINANCIAL GROUP, SA (ESFG) |
| PT056 | BANCO BPI, SA |
| SE084 | NORDEA BANK AB (PUBL) |
| SE085 | SKANDINAVISKA ENSKILDA BANKEN AB (PUBL) (SEB) |
| SE086 | SVENSKA HANDELSBANKEN AB (PUBL) |
| SE087 | SWEDBANK AB (PUBL) |
| SI057 | NOVA LJUBLJANSKA BANKA D.D. (NLB D.D.) |
| SI058 | NOVA KREDITNA BANKA MARIBOR D.D. (NKBM D.D.) |

Annex III: CAPITAL PRESERVATION MONITORING TEMPLATE – semi-annual

Annex IV: MIGRATION TO CRD/CRR MONITORING TEMPLATE - annual

Annex V: Form for competent authorities' confirmation of compliance with the recommendation

Confirmation of compliance with guidelines and recommendations

Date:

Member/EEA State:

Competent authority:

Guidelines/recommendations:

Name:

Position:

Telephone number:

E-mail address:

I am authorised to confirm compliance with the guidelines/recommendations on behalf of my competent authority: **Yes**

The competent authority complies or intends to comply with the guidelines and recommendations:

Yes **No** **Partial compliance**

My competent authority does not, and does not intend to, comply with the guidelines and recommendations for the following **reasons**⁶:

Details of the partial compliance and reasoning:

Please send this notification to compliance@eba.europa.eu⁷.

⁶ In cases of partial compliance, please include the extent of compliance and of non-compliance and provide the reasons for non-compliance for the respective subject matter areas.

⁷ Please note that other methods of communication of this confirmation of compliance, such as communication to a different e-mail address from the above, or by e-mail that does not contain the required form, shall not be accepted as valid.