Committee of European Banking Supervisors

CEBS

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CEBS's analysis on the scope of full harmonisation in the CRD

Executive Summary

1. CEBS fully supports the initiative of the European Commission ('the Commission') to work towards a single rule book in the area of banking regulation in the EU and to foster further harmonisation of the application of EU legislation across Member States. At the same time, CEBS welcomes the degree of flexibility acknowledged by the Commission's statement that a 'single' rule book does not necessarily mean a 'uniform' rule book which should provide for differences in national treatment in those limited cases where it is needed. However, some CEBS members believe that the single rule book in banking regulation can only be achieved if no flexibility is allowed in key areas for prudential regulation, such as the definition of own funds and liquidity.
2. Divergent implementations of the Capital Requirements Directive ('CRD') are seen by cross-border banking groups as an impediment to them being able to take full advantage of the single market. However, CEBS would like to point out that even a fully harmonised single rule book would not completely solve such issues (legal implementation vs. legal interpretation), while at the same time preventing or requiring the removal of national provisions that have proved, or may in future prove, useful for financial stability in the relevant Member State(s).
3. As stated by the Commission, when it comes to full harmonisation, some degree of discretion may be needed to allow Member States to apply stricter requirements and procedures where that is necessary for reasons of financial stability and/or market or product specificities. Based on the feedback to the questionnaire (see below), the following general reasons for using 'gold-plating' were given:

- Risk assessment: the Competent Authority is of the opinion that a specific CRD provision does not adequately address the underlying risk and therefore implements a more stringent requirement;

- Market/product specificities: there are market specificities or specific local products that call for a different treatment (e.g. some members stressed the necessity to introduce lower quantitative limits in order to make the requirement effective given the size of their local market or the scale of operations therein); and
- Legal framework: deviations from the Directive text in national legal implementation may stem from the necessity to fit CRD requirements into the national legal framework (corporate law, tax law, administrative law, etc...) or to safeguard legal continuity[1].

4. For the exercise, a questionnaire was developed and sent to CEBS Members and Observers to gain a first impression of which areas members are currently 'gold-plating' and where they believe the possibility to implement stricter requirements at the national level should be retained. An adjusted questionnaire was also sent to the Consultative Panel to get an impression of the industry's position on this issue. While the industry uniformly expressed its reservations with regard to the use of 'gold-plating', the feedback received from CEBS Members and Observers showed that the degree to which Members resort to 'gold-plating' varies.

5. To ensure a harmonised use of the term 'gold-plating' for the data collection exercise, a narrow definition – based on the Commission's definition - was developed. Its main characteristics are: (i) leeway given by the CRD is used (i.e. though 'gold-plating' is seen as bad practice, it is currently CRD-compliant); (ii) cases of 'gold-plating' encompass: changes to content, scope or eligibility criteria, the non-transposition of CRD requirements as well as additional supervisory procedures that constitute a barrier for credit institutions to use a given CRD requirement; and (iii) 'gold-plating' is seen as problematic mainly in those cases where there might be grave impediments to the functioning of the single market or where material (cross-border) costs are imposed. The issues of national discretions/supervisory decisions and undetermined CRD terms were seen as being outside the scope of the exercise. Further issues, potentially hampering full harmonisation were flagged, but not added to the list of 'gold-plating' examples given in Annex I.

6. The scope of the exercise covers the main areas mentioned in the Commission's letter with the restriction that cases of more stringent national law not based on a CRD requirement were not covered by the exercise. Three cases were identified: there is (i) no CRD requirement as the issue is local; (ii) no CRD requirement though there is (possibly) an EU-wide issue; and (iii) there is no CRD requirement yet. Given the early stage of the CRD IV legislation, the latter case also comprises the new concepts introduced by CRD IV. Thus, CEBS regrets, no analysis was undertaken with regard to the necessity of 'gold-plating' in the field of the "other pillar 1 measures of CRD IV".

7. In the questionnaire developed for the exercise areas of the CRD and CRD IV were also investigated where Members and industry representatives see

[1] Changes to the CRD text that were undertaken merely to fit the structure of the national rulebook without changing the substance are not covered here.

potential for reaching full harmonisation by binding technical standards. However, in the time available for the exercise no consensus could be reached on a commonly agreed list of binding technical standards or on the role the EBA should play in the development of the single rule book.

8. Finally, CEBS would like to stress the necessity to thoroughly assess whether the current rules in the Directive address existing risks adequately for all Member States before any consideration is given to the possibility of deleting the potential for 'gold-plating'. Similarly, CEBS Members and Observers will need to wait until the final rules under CRD IV are developed to determine whether the harmonised treatments adequately address the risks to be covered by the new measures, or if there are any additional areas (beyond those flagged in Annex II) where 'gold-plating' might still need to be considered; for now, CEBS would simply note that the need to apply more stringent requirements will crucially depend on the final calibration of the quantitative limits.

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Introduction

9. On 9 June 2010, the Commission addressed a letter to CEBS asking for further work to be done to support the Commission's initiative to develop a single EU rule book in banking.

10. CEBS fully supports the initiative of the Commission to work towards a single rule book in the area of banking regulation in the EU and to foster further harmonisation of the application of EU legislation across Member States. At the same time, CEBS welcomes the degree of flexibility acknowledged by the Commission's statement that a 'single' rule book does not necessarily mean a 'uniform' rule book which should provide for differences in national treatment in those limited cases where it is needed.

11. The responses received during the public consultation on CRD IV were not substantial enough to identify in which areas Member States needed discretion to apply stricter requirements for reasons of financial stability. Therefore, the Commission asked CEBS to provide an informal analysis of areas within the current and future CRD where the right to apply stricter requirements should be retained (this is usually referred to as 'gold-plating'). In addition, CEBS's views were sought on specific areas of the CRD and CRD IV where full harmonisation would be best achieved by means of technical standards.

12. As indicated by the Commission, the scope of CEBS's analysis should be the same as that being considered by the Commission for full harmonisation in the CRD IV proposals:
    - Pillar 1 capital requirements (2006/48 and 2006/49);
    - Definition of own funds (CRD IV);
    - Other Pillar 1 measures in CRD IV;
    - Large exposures (CRD II);
    - Qualifying holdings outside the financial sector; and
    - Pillar 3.

13. CEBS presents its response to the Commission's letter in the present paper. However, it has to be highlighted that CEBS has developed this analysis in a very limited period of time. Therefore, CEBS is only able to present an overview of the CRD provisions where individual Members and Observers are currently 'gold-plating' and believe that it is important to retain this possibility in the future. CEBS regrets that the time available did not allow developing a joint CEBS position on the individual issues highlighted by individual Members and Observers. Further work would be necessary to assess the individual approaches for their usefulness for the single European market, i.e. assessing whether each currently divergent national approach could be turned into a general rule or should rather be deleted for the sake of an EEA-wide harmonised treatment.

14. Every endeavour has been made to compile a complete list of all national rules constituting 'gold-plating' of CRD requirements that members currently see the need to keep in the future. However, given the time constraint the exercise was undertaken on a 'best effort' basis. The lists given in Annexes I and II thus should not be read as being exhaustive lists of necessary areas of 'gold-plating' or associated policy views[2]. It should also be remembered that national CRD II transposition processes have yet to be finished in most Member States. In addition, some issues - though being outside the scope of the exercise - are flagged in this paper.

Methodology

15. In June, a questionnaire was sent to CEBS Members and Observers to gain a first impression of which areas Members are currently 'gold-plating' and where they believe the possibility to implement stricter requirements at the national level should be kept. An adjusted questionnaire was also sent to the Consultative Panel to get an impression of the industry's position on this issue[3]. CEBS regrets that the time available to develop its analysis was not sufficient to allow for a public consultation or an impact assessment of its analysis.
16. The responses received from Members and Observers[4] show that the degree to which Members resort to 'gold-plating' varies. Some Members did not, or only to a very limited degree, implement stricter rules. However, responses also showed that the understanding of what constitutes 'gold-plating' varied widely. CEBS therefore developed a common understanding for this exercise (see the definition given in paragraphs 20-26 below). Members have revised their answers on this basis.
17. As stated by the Commission in its letter, when it comes to full harmonisation some degree of discretion may be needed to allow Member States to apply stricter requirements where that is necessary for reasons of financial stability. Based on the responses to the questionnaire, the following general reasons for using 'gold-plating' were given:
    - Risk assessment: the Competent Authority is of the opinion that a specific CRD provision does not adequately address the underlying risk and therefore implements a more stringent requirement or procedure;

[2] The Annexes are based on the input from CEBS Members and Observers and have not been necessarily checked with the national legislators.

[3] A response to the questionnaire was received from: Deutsche Bank, Danske Bank, EAPB, Handelsbanken, ING, UniCredit, and WKO. The industry representatives in general support full harmonisation, which increases transparency and avoids potential additional reporting effort by cross-border banks. 'Gold-plating' is seen as a distortion to the level playing field, hindering bank's cross-border activities.

[4] A response to the questionnaire was received from Members and Observers from: AT, CY, CZ, DE, DK, EL, ES, FI, FR, HU, IE, IT, LT, LU, MT, NL, NO, PL, PT, RO, SE, SI, and UK.

- Market/product specificities: there are market specificities or specific local products that call for a different treatment (e.g. some members stressed the necessity to introduce lower quantitative limits in order to make the requirement effective given the size of their local market or the scale of operations therein); and
- Legal framework: deviations from the Directive text in national legal implementation may stem from the necessity to fit the CRD requirements into the national legal framework[5] (corporate law, tax law, administrative law, etc...) or to safeguard legal continuity[6].

18. In this analysis, the following issues are addressed:

- Definition of 'gold-plating' for the purposes of this exercise (see paragraphs 20 to 26);
- Scope of the current exercise (see paragraphs 27 to 31);
- Further issues to be flagged, but seen as being outside the scope of the current exercise (see paragraph 32 to 40); and
- CEBS Members and Observers' views with regard to areas of the CRD and CRD IV where full harmonisation could potentially be best achieved by means of EBA binding technical standards (see paragraphs 41 to 46).

19. **Annex I** contains an overview of the identified cases of 'gold-plating' with regard to current CRD provisions, where CEBS Members and Observers believe the right to 'gold-plate' should be retained in the future. **Annex II** contains an overview of the identified cases of 'gold-plating' with regard to provisions of the CRD that might be changed in the course of CRD IV finalisation thus possibly removing the need for 'gold-plating'. Both overviews contain reasoning for retaining the possibility to be more stringent and an assessment of its national relevance. However, it has to be pointed out that not all examples of 'gold-plating' discussed in the run-up to this analysis were seen as clear-cut. Cases of doubt are flagged in the text. Annexes I and II however contain only those examples that explicitly follow the definition used for the exercise.

Definition of 'gold-plating' for the purposes of the current exercise

20. Responses received from Members and industry experts showed quite a diverse use of the term 'gold-plating'. Often the issue was mixed up with the area of national discretions. Therefore, for the purposes of this analysis, a

[5] In cases where the Directive uses common terms, like i.e. "gold", definitions are often needed to clarify the item/term for national institutions and for accounting regulations and to define the scope for the purpose of the Directive (e.g. DE defines gold as "*an ingot or a certificate conveying (partial) ownership in such ingot*"). Corrections like this are necessary to prevent inappropriate interpretations and so ensure a level playing field.

[6] Changes to the CRD text that were undertaken merely to fit the structure of the national rulebook without changing the substance are not covered here.

narrow definition was developed – based on the Commission's definition[7] – to improve the efficiency of data collection:

"*In the EU context, 'gold-plating' refers to transposition of EU legislation, which goes beyond what is required by that legislation, while staying within legality* [heading (A) below]*. Member States have large discretion when implementing EC directives. They may increase reporting obligations, add procedural requirements, or apply more rigorous penalty regimes* [heading (B) below]*. If not illegal, 'gold plating' is usually presented as a bad practice because it imposes costs that could have been avoided* [heading (C) below]*. Gold-plating therefore is different from a transposition measure in contradiction with a directive and subject to infringement procedures. 'Opting out' of deregulatory measures is not gold-plating either. Some directives only invite, but do not oblige, Member States to remove a set of national rules. When a Member State decides to maintain its rules, there are indeed no additional requirements to the directive.*"

(A) Leeway given by the Directive

21. First, it needs to be stressed that 'gold-plating', i.e. going "beyond" the CRD, covers only cases where national rules are CRD-compliant and where a leeway given – directly or indirectly – by the Directive is used. However, for the purposes of this exercise a workable definition of 'gold-plating' had to be developed. Therefore, some issues were seen as being outside the scope of the exercise.

22. CEBS notes that while the following issues do have an influence on the harmonised transposition of banking law, it is of the opinion that they have to be tackled separately from the issue of 'gold-plating' as maximum harmonisation of the relevant provisions in the CRD does not completely solve the issue of diverse CRD implementations in these cases:

    i) National discretions and supervisory decisions[8]: The issue of national discretions, i.e. those requirements within the CRD where the possibility of a more lenient treatment is linked to the fulfilment of certain criteria (and the transposition by the Member State/the Competent Authority) was seen as being outside the scope of this exercise as CEBS has already contributed to further harmonisation in this field[9], and this has been considered by the Commission in its first consultation paper on CRD IV. Furthermore, a restrictive

[7] See http://ec.europa.eu/governance/better_regulation/glossary_en.htm#_G.

[8] This differentiation is based on the terminology used for the CEBS's advice on national discretions. "National discretion" refers to the CRD wording "Member States may…", "supervisory decision" refers to the CRD wording "Competent authorities may…". Both concepts offer the discretion to adapt the CRD rule to local market specificities.

[9] See 'CEBS's second advice on options and national discretions' of June 2009 and 'CEBS's technical advice to the European Commission on options and national discretions' of 17 October 2008

implementation of a discretion given by the CRD is not seen as 'gold-plating' for this exercise.

ii) Undetermined CRD terms: Some members named cases, as examples of stricter national CRD transposition (e.g. DE, HU, IT), where they had introduced additional (in the sense of 'more specific') requirements into their national legal framework to specify more clearly CRD requirements that were not specific enough. Open terms are crucial in some areas of the CRD to allow for institution-specific needs (e.g. implementation periods, non-significance of business units for partial use of the standardised approach, requirements for internal equity models, etc.). However, in cases where the intention is not to allow for the development of individual approaches, undetermined terms may, depending upon the degree of 'openness' to different readings, potentially constitute a problem for a harmonised transposition of the respective rule within the market[10]. There are cases, where such further detailing at the national level may be required[11] to provide definite requirements for practical implementation and to increase legal certainty. By giving further details, a harmonised application of the CRD rules within the banking system of the Member State is ensured (given that otherwise case by case decisions are necessary, which might have a negative impact on the national level playing field or lead to an underestimation of risk by institutions). Though increasing the level of detail in the national transposition could be seen as a form of 'gold-plating', such cases were not taken up in the current CEBS exercise. The issue of undetermined CRD terms, i.e. those wordings within the CRD that were kept open for various reasons, was seen as being outside the scope of this exercise. Further work is suggested at the level of the CRD (see "Further issues" below).

(B) Examples of 'gold-plating'

23. To enhance comparability and efficiency of the data collection for this analysis, examples of 'gold-plating' were identified. Given that all examples are currently deemed CRD-compliant (see para. 21 above), they have in common, that all the changes result in a higher level of conservatism and that they either change the content of a given CRD requirement or constitute a barrier to the use of a given CRD requirement. Annexes I and II contain cases of 'gold-plating' that stem from the following changes:

[10] It will not always be possible nor desirable to define every term – for example, the phrase 'where appropriate' may be needed in a particular case to be both proportionate and flexible enough to respond to changes in market practice. In turn this helps avoid excessive levels of detail in the Directive text where the concept might otherwise be better covered in, say, examples or guidance from CEBS/EBA.

[11] HU gives as a reason for implementing more detailed terms the "*characteristic of the Hungarian legal framework that requires the existence of explicit criteria laid down in the regulation along which the Hungarian Financial Services Authority is empowered to exercise judgement*".

i) Changes of content: the substance of a requirement is changed, e.g. increase in risk weight, change of quantitative limits, etc.;
ii) Changes of scope: the treatment is granted to a reduced range of institutions;
iii) Changes of eligibility criteria: additional conditions are introduced for being eligible for the CRD treatment;
iv) Non-transposition of CRD requirements: a given CRD requirement is not transposed into national law thus making the rules more restrictive[12] (note that this does not cover cases where the requirement is not transposed because of its irrelevance for the local market);
v) Additional supervisory procedures: examples given in the responses received cover additional information obligations (e.g. additional reporting, notifications, information requests [13]), requirements for special reports (e.g. audit reports or legal opinions) and additional or more intensive approval processes. It has to be flagged that examples in this category are not always without ambiguity. There is a trade-off between additional costs for the industry and an increase in supervisory efficiency[14]. Some examples given in the responses received show that additional supervisory procedures were introduced to reflect the needs of the national supervisory system[15]. Such cases are not taken up in the Annexes as they foster supervisory efficiency and are not seen as detrimental to the single market. However, additional procedures were categorised as 'gold-plating' for this exercise in all cases where they constitute a clear barrier to a credit institution using a given CRD requirement[16].

[12] E.g. SE did not implement Annex VIII, Part 1, Point 11(a) CRD. The reason that they "*do not accept all equities and convertibles traded on a recognised exchange as eligible collateral is that the liquidity in many equities is very poor. The requirement that equities are traded on a recognised exchange is therefore insufficient. Only equities included in a main index are acceptable as eligible collateral in Sweden*".

[13] E.g. if back testing outliers occur, DE requires institutions to file a report (Annex V, point 8 fourth paragraph Dir. 2006/49/EC) including the magnitude and reasons for the outlier. This requirement gives the authorities the opportunity to analyse the outlier and to identify weaknesses in the institution's internal model.

[14] In AT and CY (see Annex I), for example, compliance with Pillar 3 requirements is verified by the banks' external auditors. As the majority of Pillar 3 disclosures are already included in the annual reports which are audited by external auditors, the costs imposed by these national requirements were judged to be outweighed by the benefits of not having to establish an additional verification process by the national supervisor. In AT, 864 credit institutions were subject to Pillar 3 disclosure requirements in 2009.

[15] LT, for example, remarks that currently "*wider and more frequent reporting requirements are related with the fact that there is not a large number of banks operating in Lithuania therefore they can be more closely supervised. In addition, taking into consideration the impact of the global financial crisis on the banking sector, such requirements allow better monitoring of the situation in the banking sector and taking timely measures to maintain safety and soundness of their operations*".

[16] E.g. DE has established a binding entry threshold and a binding maximum implementation period for the IRB approach (minimum entry threshold of 50% coverage by rating systems of those exposures for which use of internal rating systems or internal models for equity exposures is necessary for applying the IRB approach and no specific permanent partial use permission applies; maximum 2.5 years for achieving at least 80% coverage; maximum 5 years for finally achieving a coverage of at least 92%). HU applies a similar treatment for the IRB approach.

(C) Costs caused by 'gold-plating'

24. Responses received from Members showed that 'gold-plating' is the result of deliberate consideration by the competent authorities and it is used very selectively and usually after thorough cost-benefit analysis[17].

25. Furthermore, it needs to be flagged that not all the cases of 'gold-plating' listed in Annexes I and II have a cross-border cost effect. Given the ultimate aim of full harmonisation, 'gold-plating' is seen as problematic mainly in those cases where there may be grave impediments to the functioning of the single market.

26. Additional national requirements that do not constitute a barrier to the use of the respective CRD provision and that produce either no or only negligible costs for the supervised institutions are not taken up in the Annexes[18].

Scope of CEBS exercise

27. Given the areas mentioned in the Commission's letter, the following list summarises the references in the CRD that were assessed by CEBS for the need to retain the option of 'gold-plating':

Pillar 1:	Own Funds / Capital Definition	Art. 56 to 67 (2006/48) Art. 4 to 10 (2006/49)
	Minimum Level of Own Funds	Art. 75 (2006/48) Art. 18 to 27 (2006/49)
	Minimum Own Funds Requirements for Credit Risk	Art. 76 to 77 (2006/48) Annex II (2006/48) Annex III (2006/48) Annex IV (2006/48)
	Standardised Approach	Art. 78 to 83 (2006/48) Annex VI (2006/48)
	Internal Ratings based Approach	Art. 84 to 89 (2006/48) Annex VII (2006/48)
	Credit Risk Mitigation	Art. 90 to 93 (2006/48)

[17] E.g. UK stated that it is their stated policy *"that any national measures that go beyond directive requirements will be proposed only when justified in their own right, including through use of appropriate market failure analysis and cost benefit analysis (CBA) and where consistent with directive provisions".*

[18] E.g. in DE the institution's board of directors has to make sure that it is informed of the results of the validation process, of stress testing and of the internal audit by the independent risk control unit. The board has to consider this information when setting the institution's strategy. Though this requirement goes beyond Annex V, point 2 lit. c of Directive 2006/49/EC, it was not taken up in Annex I as the requirement enhances management awareness of the internal risk model, strengthens internal governance and does not constitute a barrier to the use of the rule.

		Annex VIII (2006/48)
	Securitisation	Art. 94 to 101 (2006/48) Annex IX (2006/48)
	Operational Risk	Art. 102 to 105 (2006/48) Annex X (2006/48)
	Market Risk	Art. 11 (2006/49) Annex I to V and VII (2006/49)
Large Exposures		Art. 106 to 118 (2006/48) Art. 28 to 32, Annex VI (2006/49)
Qualifying holdings outside the financial sector		Art. 120 to 122 (2006/48)
Pillar 3		Art. 145 to 149 (2006/48) Annex XII (2006/48) Art. 39 (2006/49)

28. A further argument that restricted the scope of CEBS's exercise was that in the absence of a CRD requirement, a specific national rule cannot be qualified as 'gold-plating'. The following three aspects are therefore seen as being outside the scope of the CEBS's analysis:

    i) No CRD requirement as the issue is local ("local rules for local issues", principle of subsidiarity): From a systemic stability point of view, special market characteristics can result in the emergence of special risks at national or regional level justifying the need for special regulatory treatment.

    ii) No CRD requirement though there is (possibly) an EU-wide issue: Some members highlighted stricter national rules in cases where the CRD provisions do not explicitly address certain cases. Further work could be necessary here to assess whether a general CRD requirement would be advisable[19]. Such cases are flagged below under "Further issues".

    iii) No CRD requirement yet: With regard to the new concepts to be introduced by CRD IV, the CEBS exercise covers only those areas where there are currently CRD requirements that will be modified by CRD IV (e.g. own funds or Pillar 3) i.e. Annex II lists only those national requirements that currently qualify as 'gold-plating'. The necessity to retain these national requirements depends on the final wording of CRD IV. CEBS regrets that the new concepts in the CRD IV package (though explicitly asked for by the EU Commission, see para. 12 third bullet point), especially the leverage and liquidity ratios, are not covered by the present analysis as there is currently neither a specific CRD requirement that could be 'gold-plated' nor any experience at national level. The need to apply more stringent

[19] E.g. IT gave the following examples: treatment of liquidity facilities, look through approach on junior tranches.

requirements will crucially depend on the final calibration of the quantitative limits. There are still many decisions to be taken both in Basel and in the EU negotiation and legislative processes which are to come. Developing a harmonised treatment that adequately addresses the risks to be covered by the new measures will reduce the necessity to 'gold-plate'.

29. However, it has to be stressed that the decision whether a national rule that is not based on a CRD requirement constitutes 'gold-plating' (see para. 23 (iii)) or not (see para. 28) is not always clear cut. Therefore, the following distinction was made for the current exercise: If the CRD is "intentionally" silent on an issue then the introduction of further conditions at the national level is to be deemed 'gold-plating' (e.g. if CRD specifies three licensing requirements, adding a further requirement is 'gold-plating'). However, adding, for example, specific large exposure limits not covered in the CRD (see the issue raised on related party lending in para. 37) is seen as being outside the scope of the exercise.

30. Some members highlighted that they currently incorporate CEBS guidelines into their national regulations and that this is considered to be super-equivalent with respect to the Directive. In many cases, CEBS guidelines do elaborate CRD requirements, i.e. detailing them to ensure harmonised interpretation and application by national competent authorities. As detailing undetermined CRD terms was seen as being outside the scope of the exercise, only those cases were included in Annexes I and II that not only are more stringent compared to the CEBS Guideline in question but also constitute 'gold-plating' with regard to the CRD.

31. Finally, for the sake of completeness it needs to be flagged that shortcomings in the Directive text, like misspelling or inadequate translation of technical terms in, or differences between different language versions, can lead to unintended deviations in national implementation. DE submitted information about areas where it saw the necessity to specify or correct provisions of the Directive or where it saw reasons to deviate from the Directive text. Such cases may not constitute 'gold-plating' in the narrow definition of this exercise but may require appropriate adjustments to the Directive itself to achieve harmonised application of community law. This detailed contribution is being delivered to the Commission in a separate Excel file.

Further issues

32. As the CEBS's analysis concentrates on cases of 'gold-plating' in the narrow sense it is necessary to flag further issues that could potentially hamper full harmonisation. The following deviations of national law from the CRD text deserve specific mention in the context of this exercise:

33. Scope of application & Pillar 3: As the scope of full harmonisation of CRD IV and thus the exercise do not encompass requirements referring to the scope of application (Articles 69 to 73 CRD), examples of 'gold-plating' Article 72

CRD were not taken up in Annex I. However, as an "increase in reporting obligations" is covered by the definition of 'gold-plating' used and requiring otherwise exempted credit institutions to disclose Pillar 3 information could be seen as requiring them to "publicly report", it was decided to at least flag the issue in the report. For example, HU stressed the importance for their local market of requiring compliance with Pillar 3 requirements on a stand-alone or sub-consolidated basis. This is considered necessary so that comparable disclosures are in place on a sector-wide basis in the local market and in order for market discipline to work in local host markets. Also, PT considered that market participants would benefit from having information on every institution within a banking group although it is now in the process of changing its regulation in the direction of the CRD rule. Finally, it could be argued that the costs generated by this additional requirement are expected to be negligible as the information required by Pillar 3 should be available within the institution and that only limited or no cross-border costs should result.

34. Deduction of a breach of the large exposures (LE) limit: HU explained in its response to the questionnaire that its approach to deducting the excess of LEs, i.e. the amount that breaches the LE-limit, from own funds could be considered as 'gold-plating'. Currently, a clarification by the CRDTG is pending. Only on the basis of this clarification can the question be answered whether or not the treatment used by HU (and also by DE, PT, and the UK) constitutes 'gold-plating' in this respect.

35. Use of call options within the synthetic securitisation framework: FR explained in its response to the questionnaire that French regulation limits the use of call options – for both classic and synthetic securitisation – to "clean-up call" options as defined for classic securitisation only (see Annex IX, Part 2 number 1(f) of the CRD). A CRDTG response is pending. Only on the basis of this clarification can the question whether FR (and also some other Member States) uses 'gold-plating' be answered.

36. Specific limits on the positions of financial institutions in the real estate sector and for country risk: NL and HU flag this issue as being very important for their jurisdictions. Annex V of CRD provides no further details about these risks, although these elements are considered important and concrete tools for safeguarding financial stability. HU for example limits real estate investments to no more than 5% of own funds as such investments are not considered to be traditional banking business and are a risky business area. As such limits are not provided for by the CRD the example was seen as being outside the scope of the 'gold-plating'-exercise. However, it could be worth assessing whether there is possibly an EU-wide issue to be addressed by the CRD in the future.

37. Related party lending: Based on Article 113(1) of the current CRD, IE remarked in its response that it currently imposes more stringent limits on exposures vis-à-vis entities in which a bank, its directors or its significant shareholders have a significant shareholding. These strict requirements are deemed important given the potential to give rise to conflicts of interest and abuse. It could be worth assessing whether there is an EU-wide issue to be

addressed by the CRD in the future as national rules on transactions with a bank's management and related parties are found in various jurisdictions.

38. Sectoral limits: In relation to limits on particular sectors, IE deems it important that banks do not concentrate their lending on any one sector because of the inherent concentration risk. As these limits are not foreseen by the CRD but rather introduced by IE as a local issue, the example was seen as being outside the scope of the 'gold-plating'-exercise.

39. Undetermined terms that need to be clarified within the CRD: DE listed in its response the following topics within the IRB area where they have established explicit requirements and mandatory treatments to correct the too general approach of the CRD and to prevent institutions referring to these insufficient requirements in order to deny the demands of the competent authorities:

    i) mandatory definition of dilution risk positions;
    ii) mandatory definition of claims in the form of collective investment units (CIUs) for distinguishing from equity and securitisation exposures, treatment of funds of funds, recourse to the mandate of funds;
    iii) mandatory treatment of exposures of protection providers for credit linked notes;
    iv) treatment of guaranteed positions where direct exposures to the guarantor are treated under the Standardised approach;
    v) explicit determination of supervisory LGD for free deliveries treated as exposures under the IRB approach;
    vi) mandatory list of exposures eligible for applying a one day maturity;
    vii) explicit quantitative requirement for determining the fully collateralised part of real estate exposures under the alternative treatment for real estate collateral;
    viii) mandatory formulas for one-year default rates and for expected loss rates; for deriving PDs or LGDs in the retail exposure class, mandatory estimation of expected loss rate instead of allowing simple derivation from realised losses; and
    ix) mandatory formula for calculating the net exposure value for long and short positions in an individual stock, adjustment for equity positions of institutions which are allowed under the provisions of Art. 18(2) of Directive 2006/49/EC to calculate the capital requirements for their trading book business in accordance with Article 75(a) of Directive 2006/48/EC.

40. Special regulation of Danish mortgage banks: In DK the most important areas where stricter regulation is imposed compared to the CRD are the legal restrictions on the activities of Danish mortgage banks, the use of the so-called "balance principle" and the specific capital requirement on the individual series (capital center) in mortgage banks. However, as these requirements refer to the scope of CRD application the issue was seen as being outside the scope of the current exercise, especially as this stricter regulation does not restrict the activities and regulation of ordinary banks and investment firms according to the CRD.

Response on Binding Technical Standards by EBA

41. In general, CEBS Members and Observers acknowledge the areas for binding technical standards ('BTS') as identified in the Omnibus Directive. In particular, IT explicitly supports the objective of full harmonisation to be achieved through the forthcoming CRD review and the BTS to be developed by the EBA.

42. Some CEBS Members and Observers pointed out that the EBA could be entrusted to develop BTS for any technical issues where the CRD does not provide sufficient detail so as to ensure harmonised application of the rules. This would avoid the need for detailed national rules for the implementation and practical application of these provisions. Keeping in mind that BTS can only be issued in areas predefined by the Directive, some CEBS Members and Observers pointed out that it must be carefully assessed upfront for each case whether BTS or guidelines would be the appropriate means to achieve convergence while recognising national specificities.

43. In some cases, no consensus could be reached in the time available for the exercise. For instance, some CEBS Members would find it helpful to have a strict and objective "retail portfolio" definition. Others however believe that the definition of the retail exposure class under the Standardised Approach (Art. 79(2) CRD) is already as objective and precise as necessary. BTS covering the IRB approach in general were intensely discussed. In relation to the "retail portfolio" definition under the IRB approach (Art. 86(4) CRD), concerns were raised that further constriction would contradict the intention of the IRB approach to leave responsibility for the design of the rating systems to the individual institutions.

44. The following list summarises the responses received to the questionnaire in which CEBS and Consultative Panel Members and Observers highlighted areas where harmonisation and a level playing field could be more efficiently achieved through BTS. (Please note that the list reflects proposals from certain members and does not necessarily represent a majority view.)

- Pillar 1:
    - Reduced specific risk requirement for certain equity portfolios (Annex I, Point 35, 1st sentence, of Directive 2006/49/EC);
    - Strict and objective "retail portfolio" definition;
    - Securitisation;
    - IRB approach;
    - Standardised and advanced approaches for Operational Risk.
- Own funds:
    - Definition of own funds;
    - Methodology of deduction from own funds.

- Large exposures:
  - Partial or total exclusion from the large exposures limits of certain exposures (Art. 111(1), last paragraph);
  - National discretions introduced in CRD II.
- Qualifying holdings outside the financial sector:
  - Definition and scope of lending of a capital nature to qualifying holdings;
  - Limit on the size of qualifying holdings outside the financial sector in the form of investments in the property market;
  - Innovative forms of participations outside of the financial sector.
- Pillar 3:
  - Means of verification of Pillar 3 disclosures.

45. Although, as mentioned above, it is too early to have a final position on CRD IV issues, some CEBS Members and Observers mentioned a few areas where harmonisation and a level playing field could be more efficiently achieved through BTS. However no final consensus could be reached in the time available for the exercise. For example, while some responses showed interest in BTS regarding the design of the leverage ratio, other CEBS Members and Observers stressed the need for full legislative confirmation by co-decision on this issue. The latter members believe that the design of the leverage ratio is core for safeguarding comparability across Member States and therefore should not be left to BTS.

46. The following list summarises the responses received with regard to BTS in the field of CRD IV issues. (Please note that the list reflects proposals from certain CEBS Members and Observers and does not necessarily represent a majority view[20].)

- Own Funds:
  - Definition of own funds;
  - Eligibility criteria for capital instruments (depending on the degree of detail in CRD IV);
  - Prudential filters and deductions.
- Liquidity standards in general:
  - List of eligible collateral for liquidity purposes;
  - Definition of parameters introduced in CRD IV.
- Calculation of dynamic provisions and capital buffers.
- Home/host issues:

[20] Indeed some CEBS Members and Observers may strongly disagree with the inclusion of certain items in this list, at least until the detailed CRD IV requirements and calibrations are known.

    - Information sharing and co-operation between home and host supervisors in going-concern and crisis situations (including branches);
    - Scope of the joint decision within colleges of supervisors.
- Design of the leverage ratio.

Committee of European Banking Supervisors

CEBS

ANNEX I

Requirements where currently 'gold-plating' is used or deemed necessary in future

No.	Reference (Dir. 2006/48/EC unless otherwise stated)	Denomination (kind of 'gold-plating')	Description (current examples of 'gold-plating')	Assessment (necessity to retain possibility of "gold-plating")
Pillar 1 (Standardised Approach)				
1.	**Art. 79(2)**	Definition of retail exposure class (additional granularity criterion)	**NO** has included the Basel granularity criterion that no aggregate exposure to one counterpart can exceed 0.2 % of the overall regulatory retail portfolio. **NO** has also asked the institutions to consider carefully whether they should include loans to SMEs in the retail portfolio.	For **NO** it is very important to retain this requirement. The limit of 1 million Euros is very high in Norway, and since diversification is essential, **NO** believes it is important to quantify the requirement. Studies indicate that the lower capital requirements for small- and medium-sized enterprises in the retail portfolio are weakly supported by statistics.
2.	**Art. 79(2)**	Definition of retail exposure class (additional quantitative threshold)	**IT** regulation provides for a quantitative threshold based on the turnover to identify SMEs for the purposes of the definition of retail portfolio.	For **IT** it is very important to keep 'gold plating' in this area to ensure a sound and clear distinction between retail and corporate counterparties. Such clear distinction is relevant especially in the countries where the economic structure is characterised by a predominance of SMEs. A quantitative threshold to define a

				SME might differ from country to country and it is relative to the average size of the enterprise within that economy. Therefore what is regarded as a SME in one country would not necessarily be in another country. Given this, **IT** deems it necessary to retain the possibility of gold-plating (by adopting a different and stricter definition of the retail portfolio) to avoid regulatory arbitrage.
3.	**Art. 80 (7)(c)**	Criteria for 0% risk weight and link to exemption for intra-group large exposures (stricter requirement)	The availability of the exemption for intra-group large exposures within the same Member State that meet certain criteria for 0% risk weight under the standardised approach is not limited to wholly-owned subsidiaries, but may be available to subsidiaries over which the firm effectively exercises a dominant influence and entities linked by unified management, absent capital ties. The **UK** has consulted domestically and is in the process of confirming its final rules in this area. The UK proposes to restrict the exemption to group entities that are wholly owned.	For the **UK** it is very important to retain this requirement. It helps to ensure there are no other interests that could interfere with the firm's control over the subsidiaries and the ability of the firm to require prompt movement of capital around the group.
4.	**Art. 80 (7)**	Exemptions for intra - group exposures (no transposition of CRD requirement)	**DK** does not permit the possibility of exempting intra-group exposures from the calculation of risk weighted assets.	For **DK** it is important that the capital requirements of institutions reflect their individual risk profile, and intra group exposures cannot in **DK**'s opinion be considered risk free.
5.	**Art. 81 and Annex VI, part 2**	Recognition of ECAIs (additional requirement)	**NO** has included the Basel eligibility criteria that an ECAI should have sufficient resources to carry out	For **NO** it is important to retain this requirement. An entity should be recognised

			qualitative analysis and to maintain considerable on-going contact with relevant persons in the management and operation of the company being rated. Thus, **NO** does not recognize credit scoring entities as ECAIs.	under the Regulation on credit rating agencies to be eligible for ECAI recognition. That Regulation does not apply to entities that issue credit scores, credit scoring systems and similar assessments. These forms of mass-rating based on publicly available information, that do not incorporate any qualitative judgement cannot be considered to have the same quality as assessments based on methodologies combining qualitative and quantitative approaches and that have resources to allow for on-going contact with senior and operational levels within the entities assessed.
6.	**Art. 84(1)**	Permission for applying the IRB approach (additional approval requirements after receiving permission to apply the IRB approach)	**DE** has established additional approval requirements for institutions which have already received permission to use the IRB approach. These institutions are nevertheless not allowed to use a particular rating system or internal equity model for the IRB approach prior to an amendment to this permission which explicitly requires (and as such permits) the use of this rating system or equity model for the IRB approach. Amending the permission requires that the rating system or equity model has passed the qualifying examination.	Art. 84(2) requires that the competent authorities must be satisfied that the institution's systems for managing and rating credit risk exposures meet the requirements for the IRB approach. In **DE**'s opinion, competent authorities cannot take this responsibility if an institution which has received the permission for applying the IRB approach is free to applying additional rating systems or internal equity models without prior examination by the competent authorities. As long as the Directive does not explicitly require that additional rating systems and internal equity models have passed a qualifying

				examination prior to being used for the IRB approach of an institution which already has received permission to apply the IRB approach, institutions could oppose a respective demand from the competent authorities. Since this would make it impossible for the competent authorities to take the responsibility according to Art. 84(2), **DE** needs an explicit requirement at least in national legislation.
7.	**Art. 84(2)**	Requirements for approval of applying the IRBA (additional use test and self-assessment requirement)	**DE** has established an additional requirement for using a rating system or internal model for equity exposures internally over a certain period as a relevant instrument for risk measurement and risk management, followed by internal re-assessment (including by internal audit) as a pre-requisite for starting the qualifying examination by the competent authorities for deciding on the permission for using the rating system under the IRB approach	**DE** considers the internal use of a particular rating system and the re-assessment by the institution itself to be a necessary pre-condition for ensuring that rating systems meet the requirements for being applied under the IRB approach. As long as the Directive does not explicitly require prior internal use of rating systems and internal equity models followed by re-assessment by the institution, institutions could oppose a respective demand from the competent authorities. Since this would make it impossible for the competent authorities to take the responsibility according to Art. 84(2) **DE** needs an explicit requirement at least in national legislation.
8.	**Art. 84(2)**	Requirements for approval for applying the IRBA (additional calculation requirement)	**DE** has established an additional requirement to calculate the capital requirements resulting from the risk parameter estimates by a particular rating system at least once prior to	In **DE**'s opinion, it is not sufficient that the rating systems themselves are implemented, the feeding of the outcomes of the rating systems into the supervisory reporting needs to

			applying this rating system under the IRB approach	be ensured prior to starting using the rating systems for the IRB approach. Moreover, the institutions need also to be aware in advance of the resulting capital requirements to ensure that the capital requirements can still be met when applying a rating system under the IRB approach. As long as the Directive does not explicitly require calculation of capital requirements in advance of using a rating system for the IRB approach, institutions could oppose a respective demand from the competent authorities. Therefore, **DE** needs an explicit requirement at least in national legislation. However, level playing field issues should also be addressed within the EU. Therefore, the CRD should be amended accordingly.
9.	**Art. 85(2)**	Sequential implementation of the IRB approach (binding minimum entry threshold and maximum implementation period)	**DE** has established a binding entry threshold and a binding maximum implementation period for the IRB approach (minimum entry threshold of 50% coverage by rating systems of those exposures for which use of internal rating systems or internal models for equity exposures is necessary for applying the IRB approach and no specific permanent partial use permission applies; maximum 2.5 years for achieving at least 80% coverage; maximum 5 years for finally achieving coverage of at least 92%).	The terms of the Directive are open for allowing institutions to negotiate an individual agreement with the competent authorities on the implementation period. **DE** considers it is necessary that the implementation period is not subject to negotiation with individual institutions. To ensure a level playing field, **DE** considers it necessary to set a global limit for the implementation period which applies to all institutions. **DE** has therefore sought a general agreement with the German banking

				associations on a reasonable implementation period which takes into account the German approach with regard to temporary and permanent partial use. As long as the Directive can be interpreted as allowing individual institutions to negotiate with their competent authorities, the competent authorities could come under pressure to allow a longer implementation period than for other institutions. Therefore it is necessary to have a mandatory limit for the implementation period in national legislation which cannot be negotiated. This requires gold plating until appropriate amendments to the Directive have been made.
10.	**Art. 85(2)**	Sequential implementation of the IRB approach (binding minimum entry threshold and maximum implementation period)	**HU** has established a binding entry threshold and a binding maximum implementation period for the IRB approach (minimum entry threshold of 50% coverage by rating systems of those exposures for which use of internal rating systems or internal models for equity exposures is necessary for applying the IRB approach and no specific permanent partial use permission applies; maximum 2.5 years for achieving at least 67% coverage; maximum 5 years for finally achieving a coverage of 100% excluding immaterial portfolios and portfolios under permanent partial use).	The terms of the Directive are open for allowing institutions to negotiate an individual agreement with the competent authorities on the implementation period. **HU** considers it necessary that the implementation period and roll-out conditions are not subject to negotiation with individual institutions. To ensure a level playing field, **HU** considers it necessary to set a global limit for the implementation period and coverage requirements which applies to all institutions.

11.	**Art. 85(2)**	Sequential implementation of the IRB approach (additional requirement for parallel calculation of the Standardised approach)	**DE** requires institutions which have received permission to apply the IRB approach to be capable of calculating the capital requirements for the Standardised approach in addition to the calculation according to the IRB approach until at least 80% of the part of the portfolio which could be captured by rating systems is indeed covered by rating systems.	**DE** considers this necessary to be able to enforce a timely return to the Standardised approach in case an institution turns out not to be able to realise its plan for sequential implementation of the IRB approach. If institutions do not remain able to calculate the Standardised approach until most of the implementation plan is realised, it would be impossible in practice to require a return to the Standardised approach in a timely manner. This would result in a longer period of only partially coverage by the IRB approach, in contradiction to Art. 85(2) which requires implementation within a reasonable period of time. As long as the Directive does not explicitly allow for sanctions in cases of temporary non-compliance, institutions could oppose a respective demand from the competent authorities. Since this would prevent the competent authorities from addressing concerns about sufficiently capturing the risks **DE** needs an explicit requirement at least in national legislation.
12.	**Art 85(4)**	Method selection under the IRB approach (additional approval requirement)	**DE** requires institutions to calculate the capital requirements for a particular type of exposures as determined by the permission for this institution without its agreement i.e. institutions are not allowed to change the method chosen under the IRB approach for a particular type of	**DE** considers this additional approval to be necessary since the terms of the Directive do not prevent institutions from changing the method applied under the IRB approach to a particular type of exposures after having received permission to apply the IRB

			exposures prior to permission from the competent authorities.	approach. Apart from questions regarding the need for permission for some methods, a resulting change in capital requirements could impact the ability of the institution to meet the requirements for the general partial use exemption according to Art 89 para. 1 lit. c of the Directive. Because of this potential non-compliance, it is necessary that an institution has received in advance permission to change methods. As long as the Directive does not explicitly require permission for changing the calculation of capital requirements under the IRB approach, in particular for choosing a different method, institutions could oppose a demand to reverse the change from the competent authorities. Since such changes could result in non-compliance with requirements under the IRB approach and could therefore no longer ensure the risks are sufficiently captured **DE** needs an explicit requirement at least in national legislation.
13.	**Art. 85 (4) and (5)**	Reversion to Standardised Approach (additional requirement)	Specific cases for reversion from the IRB Approach to the Standardised Approach are listed in the **HU** legislation (merger or demerger, force majeure, misleading IRB results) in order to reduce the possibility for regulatory arbitrage with the choice of methods.	**HU** considers that in order to prevent regulatory arbitrage the possibility to revert to simpler approaches should be strictly determined.

14.	**Annex VI, part 1, point 9**	Exposures to regional governments and local authorities (increased risk weight)	For such **PL** entities a 20% risk-weight, instead of 0%, is applied. Rationale: although the preferential treatment of 0% (assignment of lower than "normal" 50% risk weight) is justified as they have an almost identical risk profile (taking into consideration the legal status of Polish regional governments and local authorities), a risk-weight of 20% was imposed. At the time the rule was being drawn up the Polish regional governments were young organisms and the supervisory authority wished to prevent them from taking on too much debt. Thus it was decided that the 0% risk weight would be increased to 20%.	For **PL**, it is very important to retain this requirement.
15.	**Annex VI, part 1, point 43**	Planned increase of risk weight for FX retail exposures to 100% (increased risk weight)	**PL** plans to increase the risk weight for FX retail exposures (in currency other than the one of the creditor's income) secured by residential real estate to 100%.	For **PL** it is very important to retain gold-plating in this area (see also PL position on FX exposures secured by residential real estate).
16.	**Annex VI, part 1, point 44 and ff**	75% risk weight (planned to be increased to 100%) for FX exposures secured by residential real estate (increased risk weight)	According to **PL** regulation, in case of FX exposures (in currency other than the one of the creditor's income) secured by residential real estate receives 75% (instead of 35%) risk weight. Moreover this exposure has to meet the criteria for retail exposures. **PL** plans to increase the risk weight for FX exposures (in currency other than the one of the creditor's income) secured by residential real estate to 100%.	For **PL** it is very important to retain gold-plating in this area. Because of the relatively high interest rate for PLN, FX (CHF in particular) retail real estate lending is very popular leading to significant FX and credit risks.
17.	**Annex VI, part 1,**	LTV and LTI rules for	**HU** regulation requires a specific LTV	For **HU** it is very important to retain

	point 44 and ff	exposures secured by residential real estate (additional specification)	ratio (75%) for granting the preferential treatment (risk weight 35%). A further eligibility criterion for the preferential treatment is that 80% of the borrower's revenues to repay its debt shall not constitute cash flow generated by the property. Banks shall examine the repayment capacity of borrowers and set maximum loan-to-income ratios for all obligors based on pre-determined criteria laid down in the regulation. Currently, FX retail real estate lending is not permitted.	gold-plating in this area. In order to have sufficient coverage of exposures and ensure the repayment capacity of borrowers, these rules must definitely be maintained in the Hungarian market.
18.	**Annex VI, part 1, point 45 and ff.**	LTV ratio (additional specification)	**IT** regulation requires a specific LTV ratio (80%) for granting the preferential treatment (risk weight 35%); a higher level (up to 100%) is admissible if additional guarantees are provided, in this case the 35% applies and not the possibly more favourable risk weight of the guarantee.	**IT** deems this an area where full harmonization should be achieved by BTS.
19.	**Annex VI, part 1, Points 45 to 50**	TSA for credit risk-exposures secured by mortgages on residential property	**NO** requires that exposures secured by mortgages on residential property may only be assigned a risk weight of 35% if the exposure is within 80% of a prudent valuation of the mortgage and for recreational property within 60% of prudent valuation of the mortgage. **NO** follows the fluctuations in house prices and has at times increased the margin so that the exposure shall be secured within 60% of the residential	For **NO** it is very important to retain this requirement. The reason why **NO** has required the exposure to be secured within a percentage of the property's value and has reduced the percentage when there are bubbles in the housing market is to ensure that the collateral covers the exposure in a market of falling house prices.

			property's value.	
20.	**Annex VI, part 1, point 61 (a)**	Threshold for past due items (no threshold is defined by the competent authority)	**MT** requires institutions to risk weight at 150% all exposures that are past due for more than 90 days without setting any threshold.	For **MT** it is important that this requirement is kept. It is felt that all exposures, whatever their amounts, have to be downgraded to the 'past due items' category if any of the payments fall past due by more than 90 days.
21.	**Annex VI, point 81**	CIUs (additional requirements)	**IT** regulation contains specific provisions on the contents of the agreement with the third party (responsible for the calculation and reporting of the requirement) and on the allocation of responsibilities.	**IT** deems this an area where full harmonization should be achieved by BTS.
22.	**Annex VI, point 81**	Risk-weight of CIU may be calculated by a third party (change of eligibility criteria - additional condition)	**DE** requires that an external auditor confirms the correctness of the calculation three months, at the latest, after the end of the CIU's business year, if the risk weights are calculated by a third party.	It is very important for **DE** to keep this requirement as it is necessary to ensure the correctness of the relevant calculation and a level playing field.
Pillar 1 (Internal Ratings based Approach)				
23.	**Annex VII**	Organisational requirements for IRB systems (further specifications)	**IT** regulation provides a greater level of detail in the organisational requirements for IRB systems adopted by **IT** banks. This is driven by national supervisory practices as well as by the current national regulation, where governance and internal control issues have been clearly defined since before the Basel II implementation.	For **IT** it is fairly important to keep 'gold plating' in this area as organisational requirements are an essential component of the overall approach to an efficient and sound management of risks. This issue should be covered by EBA's BTS; otherwise **IT** would maintain its approach.
24.	**Annex VII, part 1, point 9**	Risk weight exposure amount for providers of nth default credit protection (conservative	**DE** requires application of a 1250% risk weight to positions in a basket for which an institution cannot determine the risk weight under the	**DE** considers this necessary for avoiding cherry picking of positions to be excluded when calculating risk weighted exposure amounts for nth

		risk weight of 1250%)	IRB approach.	default credit protection. Since the Directive does not explicitly require applying a 1250% risk weight to positions in a basket for which an institution cannot determine the risk weight under the IRB approach, institutions could oppose a respective demand from the competent authorities. Therefore, **DE** needs an explicit requirement at least in national legislation. However, level playing field issues should also be addressed within the EU. Therefore, the CRD should be amended accordingly.
25.	**Annex VII, part 1, point 22**	PD/LGD approach (additional supervisory approval)	In **RO** a credit institution may only use the PD/LGD approach if it demonstrates to the National Bank of Romania that the development of an internal model for that specific portfolio is not possible, while the requirements for the PD/LGD approach are met. At the time Basel II regulations were issued (December 2006) there were expectations that the more sophisticated Romanian credit institutions would choose VaR models for determining the capital requirements for market risk. But, as, for the time being, there are no Romanian credit institutions using them, the regulator is currently considering the removal of these provisions.	**-**
26.	**Annex VII, part 1, point 22**	PD/LGD approach for equity exposures (non-	In **FR** the use of the PD/LGD approach for the calculation of the	For **FR** it is very important to retain this treatment.

		implementation)	risk weighted exposure amounts for equity exposures is not allowed since the relevant provisions have not been transposed.	The **FR** competent authority considers that PD and LGD are imperfect factors for calculating the capital requirements related to equity risk. These parameters have been calibrated for credit risk capital requirements, resulting from the default of counterparties, which is different from the market losses of value which affect equities.
27.	**Annex VII, part 1, point 25 (first sentence)**	Internal models approach for equity exposures (additional requirements for approval of models)	**DE** applies the use test requirements for rating systems under the IRB approach in an analogous manner to internal models for equity exposures.	**DE** considers it necessary that approval of internal models for equity is subject to requirements for ensuring that models provide accurate and consistent quantitative estimates of risk. Therefore, DE applies the nationally established requirements for rating systems in an analogous manner to internal models for equity exposures. The minimum requirements according to Annex VII, part 4, points 115-123 Directive are silent on use test requirements. As long as the Directive does not establish explicit requirements for the use test of internal models for equity exposures prior to approval for being applied under the IRB approach, institutions could oppose a respective demand from the competent authorities. Since this would make it impossible for the competent authorities to take the responsibility according to Art. 84(2) **DE** needs an explicit requirement at least in national legislation.

28.	**Annex VII, part 3, point 9(a)**	Conversion factor for undrawn retail credit lines (stricter requirement)	The **UK** will only permit that an undrawn retail credit line is considered as unconditionally cancellable and therefore eligible for a 0% conversion factor if a firm can justify a 0% conversion factor based on historic experience.	For the **UK** it is very important to retain this. The notion of allowing an across-the- board 0% conversion factor for retail credit lines is inconsistent with the absence of a foundation approach for retail exposures. As such institutions are able to use an IRB approach for retail exposures, only if they are able to produce estimates of the three parameters of PD, LGD and conversion factors, and therefore there is no place for such an across–the-board 0% conversion factor. Moreover the experience of banks who do model the conversion factor on undrawn retail credit lines is that substantial positive conversion factors are appropriate.
29.	**Annex VII Part 4 point 2**	Assigning exposures to rating grades (additional approval requirement)	**DE** requires institutions to assign each type of exposures *permanently* to the rating system determined by the permission for the institution; i.e. institutions are not allowed to change the applied rating system prior to permission from the competent authorities.	**DE** considers this additional approval requirement necessary since the terms of the Directive allow institutions to change the rating system to which an obligor or transaction is assigned. The Directive requires solely that the institution documents its rationale. If, however, an institution has received permission based on its decision to apply a particular rating system, it should not be allowed to apply a different rating system without prior permission from the competent authorities. Otherwise the competent authorities cannot take the responsibility according to Art. 84(2) which requires that the

				competent authorities must be satisfied that the institution's systems for managing and rating credit risk exposures meet the requirements for the IRB approach.
30.	**Annex VII, part 4, point 26**	Segregation of duties (additional requirement)	**PT** has an additional requirement for the assignment and periodic reviews of assignments of ratings. It must be done by an independent party that: i) does not directly benefit from decisions to extend the credit; and ii) is not responsible for the credit approval process.	**PT** considers that the existence of the segregation of duties between the assignment and periodic reviews of assignments of ratings and credit approval decisions is the only way to avoid conflict of interests and ensure a regular and independent assessment of the risk.
31.	**Annex VII**	IRB parallel reporting (additional reporting requirement)	In **SE** parallel calculation and reporting of capital adequacy according to the IRB-format and according to standardised approach -format is required for four subsequent quarters, before institutions can get approval to use the IRB.	For **SE** it is fairly important to retain this requirement. **SE** banks should be able to demonstrate that they have the systems and routines in place so that they can report according to the IRB rules. The **SE** competent authority sees this as part of their evaluation of the risk controls and management processes. It is noted that the requirement is administrative, it does not require the institution to hold more capital than the Directive requires.
Pillar 1 (Credit Risk Mitigation)				
32.	**Annex VIII, part 1, point 11(a)**	Eligible financial collateral (non-implementation)	**SE** has not implemented this provision.	For **SE** it is important to retain the current approach. The reason why **SE** does not accept all equities and convertibles traded on a recognised exchanges as eligible collateral is that the liquidity in many equities is very poor. The requirement that equities are traded on a recognised exchange is

				therefore insufficient. Only equities included in a main index are acceptable as eligible collateral in Sweden.
33.	**Annex VIII, Part 2, point 8(b)**	Minimum requirements for the recognition of real estate collateral (additional requirement)	In **SI** the property valuation shall be made in accordance with the International Valuation Standards developed by the International Valuation Standards Committee – IVSC.	For **SI**, it is important to retain this requirement. Due to great diversity among different types of property valuers in **SI**, it was necessary to put in place fundamental principles for the valuation of property.
34.	**Annex VIII, part 2, point 11 lit. b**	Minimum requirements for treating lease exposures as collateralised (change of eligibility criteria - additional condition)	**DE** requires that the risk management and measurement procedures of an institution shall also include the location of the leased asset (para. 523 of the Revised Basel framework).	It is very important for **DE** to keep this requirement, as **DE** deems it prudent and natural to include the location in the monitoring requirements, especially as (i) the location may affect the value of the leased asset and (ii) the Revised Basel framework does refer to location.
35.	**Annex VIII, part 1, point 11**	Additional eligibility under the Financial Collateral Comprehensive Method (change of eligibility criteria - additional condition)	**DE** requires that if an institution has opted for the Financial Collateral Simple Method it can only be allowed to consider the net amount of a netting agreement for mutual monetary claims and debts if all monetary claims and debts included in the netting agreement are denominated in the same currency, because the effects of netting agreements are mapped in cash amounts and not in risk exposures.	It is very important for **DE** to keep this requirement, as the effects of netting agreements are mapped in cash amounts and not in risk exposures. The risks inherent in netting agreements with claims and debts in different currencies would not be adequately reflected in the Financial Collateral Simple Method if such a requirement was not included.
36.	**Annex VIII, part 2, point 14**	Credit Risk Mitigation (additional requirement)	CRD II states that unfunded protection must be legally enforceable in all relevant jurisdictions. It does not require firms to conduct on-going legal	For the **UK** it is very important to retain this. **CZ** also supports this proposal. There seems no reason why there would be an on-going requirement

			review of enforceability. The **UK** proposes to require firms to conduct similar on-going legal reviews for unfunded protection as are required for funded protection.	for checking legal certainty for some types of CRM, e.g. financial collateral, when it is not required for unfunded credit risk mitigation e.g. a guarantee.
37.	**Annex VIII, part 2, point 20 lit. d / Annex VIII, part 1, point 31**	Credit protection by way of a credit derivative (change of eligibility criteria - additional condition)	**DE** stipulates that in the case of an nth-to-default credit derivative, the requirements set out in the provisions mentioned apply to each underlying obligation contained in the basket of such nth-to-default credit derivative if such obligations are to be taken into account for credit risk mitigation.	It is very important for **DE** to keep this requirement as **DE** deems it necessary to ensure that for every underlying obligation in an nth-to-default credit derivative to be considered as credit protection it does actually provide full protection for the lending credit institution. This is only the case if the requirements set out in the mentioned provisions apply to each obligation contained in the basket of an nth-to-default credit derivative.
38.	**Annex VIII, part 3, point 3**	Funded credit protection by way of a credit linked note (change of eligibility criteria - additional condition)	**DE** stipulates that investments in credit linked notes issued by the lending credit institution may only be treated as cash collateral if the credit default swap embedded in the credit linked note *per se* would be an eligible unfunded credit protection. This requirement ensures that the CLN provides protection for the lending credit institution.	It is very important for **DE** to keep this requirement as **DE** deems it necessary to ensure that an investment in a specific CLN used as cash collateral does actually provide protection for the lending credit institution. This is only the case if the credit default swap embedded in such a credit linked note by itself would be eligible unfunded credit protection.
39.	**Annex VIII, part 3, point 3**	Funded credit protection by way of a credit linked note (change of content)	**DE** stipulates that for investments in credit linked notes issued by lending credit institutions which are treated as cash collateral and which do not include a credit event "*restructuring of the underlying obligation involving forgiveness or postponement of principal, interest or fees that result*	It is very important for **DE** to keep this requirement as **DE** deems it necessary to ensure that an investment in a specific credit linked note used as cash collateral does actually provide protection for the lending credit institution. Therefore, it is necessary to reduce the value of

			in a credit loss event" the value of the credit protection has to be reduced according to Annex VIII, part 2, point 20 of Directive 2006/48/EC.	the credit protection if the CLN in essence does not provide effective protection in cases of restructuring of the underlying obligation.
40.	**Annex VIII, part 3, point 42**	Own estimates of volatility adjustments (additional requirement and additional notification)	In **SI** a bank using its own estimates must use them for all types of financial collateral, and may not switch to using supervisory volatility adjustments without justifiable grounds and without notifying the Bank of Slovenia in advance.	For **SI** it is fairly important to retain this requirement. This additional requirement is used to prevent 'cherry picking' and to avoid unjustified change of use of different volatility adjustments.
Pillar 1 (Securitisation)				
41.	**Art. 122a(1)**	Securitisation retention (stricter requirement)	In **DE** the legislative body intends to fix the net economic interest at 10% after an interim period of two years.	For **DE** would be very important to retain this treatment until appropriate adjustments to the Directive have been made. The **DE** Parliament considers a retention level of less than 10% as not sufficient to adequately align the interest between originator and investor, since even before the crisis a retention level of up to 10% in certain exposure types was not unusual. **DE** will strive for a retention level of 10 % at the European level within the next two years.
42.	**Annex IX, part 2**	Recognition of significant credit risk transfer in securitisation (stricter requirements)	**PT** has defined specific rules to consider the existence of a significant risk transfer in a securitisation, namely the percentage of each tranche allowed to be retained. These rules were not originally defined in the CRD, which made the PT legislation more restrictive, but they are now	It is very important for **PT** to keep this stricter treatment as this provision is not always applicable in PT. Since most of the securitisations issued in Portugal have mezzanine tranches, they would not be subject to any retention of most subordinated tranches according to CRD II. In addition, it should be

			introduced by CRD II. However, PT plans to be more restrictive than what is defined in CRD II, namely, applying 80% as the maximum percentage of retention for most subordinated tranches to all securitisations.	possible for Member States/Competent Authorities to require a percentage of retention for the most subordinated *tranches*, in all securitisations, even when there are *mezzanine* tranches.
43.	**Annex IX, part 4, point 10**	Securitisation positions on first loss tranches	In **IT** the look through approach cannot be used for first loss tranches.	**IT** deems this an area where full harmonization should be achieved by BTS.
44.	**Annex IX, part 4, point 39**	Methods for securitisation positions under the IRB approach (additional pre-condition and approval requirement for relinquishing a permission to use the IAA)	**DE** has established a provision that allows institutions to revert from the IAA only if material reasons exist and with the prior consent of the supervisory authority.	**DE** considers this to be an important requirement so that selection between methods is not used for arbitrating the capital requirements as the Directive does not prevent this. As long as the Directive does not explicitly prevent institutions from ceasing to use an approved internal assessment approach (IAA) in order to use e.g. the supervisory formula (SFA), institutions could oppose a respective demand from the competent authorities. Therefore. **DE** needs an explicit requirement at least in national legislation.
Pillar 1 (Operational Risk)				
45.	**Art 102 (3)**	Reversion to simpler approaches from AMA (additional specification)	Specific cases for reversion from the AMA Approach to the Standardised or BIA Approach are listed in the **HU** legislation (merger or demerger, force majeure, not having purpose of reduced capital requirement, misleading AMA results) in order to reduce the possibility for regulatory arbitrage between the choice of methods.	**HU** considers that in order to prevent regulatory arbitrage the possibility to revert to simpler approaches should be strictly determined.

46.	**Art. 104, 105 and Annex X, part1**	Establishment of eligibility thresholds for the use of approaches other than the BIA for Operational Risk (i.e. Standardised and Advanced approaches) for supervisory capital purposes (additional requirement) Establishment of a detailed scheme for mapping the activities of a bank to the regulatory Business Lines (additional requirement)	In **IT** eligibility thresholds have been established for larger banks given that their activities are normally significantly diversified and they have the resources to implement the organizational measures needed to comply with regulatory requirements. Eligibility thresholds for specialised larger banks have been established as such banks could benefit from adopting such approaches, especially in terms of risk prevention and containment. A regulatory scheme for mapping banks' activities to the regulatory business lines was deemed crucial to ensure consistency of the mapping process across banks and prevent regulatory arbitrage (i.e. assigning activities to those business lines having lower regulatory coefficients).	**IT** would favour BTS as the way to harmonise this treatment.
47.	**Art. 104 (6)**	Credit institutions need to apply for supervisory approval for the use of the Standardized Approach (STA) /Alternative Standardized Approach (ASA) for operational risk (additional supervisory approval)	In **RO** the regulatory use of the STA/ASA is allowed subject to compliance with the set criteria. As under the Advanced Measurement Approach (AMA) compliance with qualifying criteria should be verified by the supervisor before regulatory use of the approach is allowed, especially since moving from the Basic Indicator Approach (BIA) to STA/ASA leads to a reduction in the capital charge for operational risk in most cases.	For **RO** it is very important to retain this requirement. Requiring credit institutions to apply for explicit approval allows the supervisor to make sure that the reduction in capital charge is related to better risk management standards, as for the AMA. Also, the capital charge computation methodology under STA/ASA is somewhat more complex than the one under BIA: hence the need for the supervisor to make sure that the methodology (especially the relevant indicator mapping process) is applied correctly.

48.	**Annex X**	Requirement for a formal application and a validation process for the use of the Standardised Approach for Operational Risk(additional supervisory approval)	**PT**'s reasoning is twofold: i) validation of the correct allocation of the relevant indicator to the business lines and ensuring harmonisation between institutions; ii) it is important to ensure that institutions are implementing adequate procedures regarding the management of operational risk and recording data on operational risk losses.	It is very important for **PT** to keep this procedure as it should be possible for Member States/Competent Authorities to continue to require a formal approval process for the use of the Standardised Approach for Operational Risk, since this process is crucial to ensuring that the institutions are putting in place, in the early stages of operational risk management the right procedures and systems that would allow them to move to the AMA.
49.	**Annex X, Part 4, point 2**	Conditions for roll-out of AMA approach (additional specification)	In **HU** there are specific criteria for the roll-out of the AMA approaches. 50% entry coverage is necessary and a formal and well reasoned roll-out plan must be submitted.	**HU** considers that it is necessary to have a global entry criterion for institutions to start sequential implementation of the AMA Approaches and to prevent regulatory arbitrage.
Pillar 1 (Market Risk)				
50.	**Annex I, point 8 (ii)** **Directive 2006/49/EC**	Treatment of credit default swaps (change of content)	The CRD says to treat credit derivatives as you would the underlying obligation (so a CDS referencing a corporate bond in **UK** would use BIPRU 7.2 rules for IRR.) **UK** says that you should treat CDS differently and apply its BIPRU 7.11.18-7.11.37 rules for standard CDS.	The **UK** notes that the present CRD does not adequately address the fact that in the trading book default risk is being traded as are other aspects of credit derivatives such as spread risk and any regulatory capital requirements must be responsive to these risks.
51.	**Annex I, point 16a and 16b (of agreed CRD III amendments)** **Directive 2006/49/EC**	Calculation of market risk capital requirements on securitisation credit derivatives in the trading book (stricter requirement)	Under CRD III institutions are required to calculate their market risk capital requirements on all net securitisation positions in the trading book, including securitisation credit derivatives, using standard rules, which require application of the	The **UK** believes that the current CRD does not adequately address the risks for securitisation credit derivatives in the trading book. However, the **UK** will consult on whether or not to retain gold plating rules in this area as part of its

			relevant banking book risk weights to the next securitisation positions. **UK** currently has super-equivalent standard rules for the calculation of market risk capital requirements on securitisation credit derivatives in the trading book. These rules require institutions to hold the higher of the potentially 'super-equivalent' amount and the CRD minimum.	domestic implementation of the CRD III amendments and in the light of those amendments.
52.	**Annex I, point 32** **Directive 2006/49/EC**	Duration-based approach (stricter requirement)	**DE** has implemented the duration-based approach as written down in 718 (Vii) of the Revised Basel framework	For **DE** it is very important to retain the right to be stricter in order to harmonise the Basel framework with the CRD. **DE** thinks that the duration-based method in the Basel framework is easier for the institutions to handle Having the same structure (allowance, assignment to time bands) and just the differentiating capital charge (5% instead of 10%) makes the change from the maturity method to the duration method easier.
53.	**Annex I, point 33, 3rd sentence** **Directive 2006/49/EC**	Overall net position of equities (stricter requirement)	In **DE** the capital requirements are calculated separately for each national market following 718 (xx) of the Revised Basel framework.	For **DE** it is very important to retain the right to be stricter in order to harmonise the Basel framework with CRD. **DE** thinks that the Basel framework is more risk adequate on this point because the capital charge for the general market risk is intended to cover the risk of loss from movements in individual (national) equity markets as a whole in each case. Therefore, for example, a short position in equities which are

				traded on the US market cannot be netted with a long position in equities which are traded on the German market.
54.	**Annex II, point 1,** **Directive 2006/49/EC**	Settlement (stricter requirement)	**SE** requires a higher capital charge for settlement risk compared to the rules in the Directive. In particular, **SE** requires full capital charges four days after due settlement date, while this level is reached only on day 46 in the Directive.	For **SE** it is fairly important to retain this requirement. In SE very few transactions are unsettled after the due settlement date. It is difficult to know how much of this effect is due to the steeper charges, but **SE** feels that it would give an entirely wrong message if they were to lower the overdue charges. The importance of having a well functioning infrastructure for financial instruments has also been recognised in the financial crisis. Capital charges in the Directive are too low and should be pushed upwards.
55.	**Annex III, point 1** **Directive 2006/49/EC**	Exemption limit (stricter requirement)	**DE** has implemented the exemption limit as written down in para. 718 (XLii) of the Revised Basel framework.	For **DE** it is very important to retain the right to be stricter in order to harmonise the Basel framework with the CRD. **DE** thinks that the exemption limit in the Revised Basel framework is more risk adequate than the definition in the CRD.
56.	**Annex V, point 1** **Directive 2006/49/EC**	Combination of internal models and the standardised methodology (additional requirement)	Competent authorities may allow institutions to calculate their capital requirements for position risk, foreign exchange risk and/or commodities risk using their own internal risk management models instead of or in combination with the methods described in Annexes I, III	For **FI** this interpretation is in line with point 718 (Lxxxvi),a)) of the Revised Basel framework.

			and IV. **FI** requires in addition that each broad risk factor category such as interest rate risk or commodities risk must be assessed using a single approach (either internal model or the standardized approach).	
57.	**Annex V, point 2, lit. a** **Directive 2006/49/EC**	'Use test' (additional requirement)	In **DE** the internal model approach must be identical to the methods internally used for risk measurement. Deviations are only allowed regarding the holding period, quantile in the distribution or duration of the historical period of the data. **DE** makes sure that the model used to calculate regulatory VaR is used for risk management without large changes (use test).	For **DE** it is very important to establish harmonised regulation or otherwise to keep the right for gold-plating. Institutions should not use an internal model which is very different from the model used for calculating regulatory capital as there would be no incentive for the regulatory model to show an institution's real risk profile.
58.	**Annex V, point 2, lit. g** **Directive 2006/49/EC**	Stress testing (stricter requirement)	**DE** requires that stress testing must be conducted at least monthly.	For **DE** it is very important to establish harmonised regulation or otherwise keep the right for gold-plating. **DE** makes sure that "frequently" is not interpreted as a frequency of more than a month.
59.	**Annex V, point 2, lit. g** **Directive 2006/49/EC**	Stress testing (stricter requirement)	**DE** requires that the calculation of possible losses in stressed situations has to be conducted on an overall level as well as for separate financial instruments and groups of instruments.	For **DE** it is very important to establish a harmonised regulation; otherwise keep the right for gold-plating. With this stricter requirement institutions must identify portfolios or sub-portfolios which are especially sensitive in stressed situations.
60.	**No reference in Directive 2006/49/EC**	Limitation (additional requirement)	**DE** requires that the institutions prove that trading limits depend on the VaR calculated within their internal model approach.	For **DE** it is very important to establish harmonised regulation or otherwise keep the right for gold-plating. This requirement makes sure that

				the internal model approach is used in risk management (use test).
61.	**Annex V, point 10, lit. e** **Directive 2006/49/EG**	Data quality for VaR calculation (stricter requirement)	**DE** requires that the data for the VaR calculation have to be updated immediately if necessary.	For **DE** it is very important to establish harmonised regulation or otherwise keep the right for gold-plating. If the market environment changes quickly banks must use actual data for calculating the VaR.
62.	**Annex V, point 12** **Directive 2006/49/EC**	Modelling equity risk (additional requirement)	**DE** requires that the institution's internal model captures different movements of prices for different products or group of products or differences between spot and forward prices in an appropriate manner for both equity and commodity risk.	For **DE** it is very important to retain the right to gold-plating. **DE** has applied the rules for commodities specified in this provision to equities as these risks can also arise when dealing with equities.
Large Exposures				
63.	**Art. 110**	Reporting of large exposures extends to the reporting of facilities to directors (additional reporting requirement)	**CY** sets out limits on facilities granted to bank directors and their connected persons so reporting of the facilities to bank directors had always been done with the reporting of large exposures.	**CY** is indifferent about keeping the 'gold plating'. However, it points out that large exposures and credit facilities to directors are related issues and the CRD section of large exposures might be expanded to incorporate facilities to directors.
64.	**Art. 110 (1) (last subpara.)**	Extended reporting of 20 largest exposures (additional reporting requirement)	**SE** will require all institutions to report the 20 largest exposures on an individual basis as well as the 15 largest corporate exposures. For institutions with total assets below 5 billion SEK are only required to deliver these reports annually; all other reports are required quarterly.	For **SE** it is very important to retain the right to 'gold-plate' here as wider reporting requirements are deemed necessary to achieve efficient supervision.
65.	**Art. 110 (1)**	Reporting about large exposures (additional requirement)	**DE** has established a requirement that institutions have to report general credit lines exceeding the	For **DE** this reporting requirement is necessary for ensuring that in cases of general credit lines the institution

			10% threshold. These are contingents given to a contractual partner giving him the option to deliver borrowers to the institution up to a certain limit.	is aware of the risks if a borrower is actually assigned.
66.	**Art. 111(4) last sentence**	Supervisory approval to exceed 100% limit for exposures to institutions (non-transposition)	**AT** did not implement the possibility for the competent authority to allow on a case by case basis an institution to exceed the 100% limit in terms of the credit institution's own funds.	**AT** authorities had severe doubts as to the prudence of this requirement. Furthermore, as there are no criteria specified in the CRD on which the case by case decision of the competent authority can be based, there was the fear that an unlevel playing field would arise (especially given the large number of small credit institutions operating in AT).
67.	**Art. 113(4)**	Intra-group large exposures (stricter requirement/additional approval process)	**DK** requires that financial undertakings may not, without prior approval from the Danish FSA, have exposures within the same group except for exposures to subsidiary undertakings. A similar ban exists with other undertakings or persons who exercise a direct or indirect controlling influence on the financial undertaking, or who are controlled by undertakings or persons with such an influence. A supervisory approval, if given, also sets limits on the size of the exposure. The supervisors' approval takes into account the own funds of the institution on a case by case basis.	In **DK** this prudential rule proved its importance, as it contained the contagion under the financial crisis. This rule is of great significance to the financial stability of the financial sector and it is very important to keep it.
Qualified Holdings Outside the Financial Sector				
68.	**Art. 120**	Qualifying holdings outside the financial sector extend to direct/ indirect holdings of more	**CY** has been applying this restriction since before the implementation of the CRD.	For **CY** it is very important to keep this restriction. The diversification by banks into activities other than banking should be restricted and

		than 10% of the share capital of the investee company (additional requirement/conditions)		own funds should be retained in order to finance internal growth and provide against banking risks. The restriction of qualifying holdings on the basis of the banks' own funds alone may prove to be inadequate.
69.	**Art. 120**	Prohibition of qualifying holdings in non-financial entities that would give credit institutions control over those entities (additional requirement)	**RO** prohibits credit institutions from gaining control over non-financial entities.	For **RO** it is very important to retain this requirement for reasons of financial stability and their local economic situation. The involvement to a great extent of credit institutions in businesses other than those characteristic of banking activity could expose credit institutions to additional risks, which cannot always be properly managed nor "covered" entirely by limits on credit institutions' own funds. Also, only some non-financial activities are expressly permitted to be performed by credit institutions and only to a very limited extent, i.e. the revenues from these activities should not exceed 10% of the revenues derived from banking activities. Permitting credit institutions to have control over entities performing these activities would, in effect, invalidate the above mentioned restriction.
70.	**Art. 120**	Lending of a capital nature to qualifying holdings (additional requirement)	**CY** believes that lending that incorporates capital features is no different to participations in share capital so the treatment for own funds purposes should be the same.	For **CY** it is very important to keep a specific requirement for the deduction of lending of a capital nature, as well as investment in non-banking related activities, as it alleviates the risk of by-passing the implementation of the regulation on

				qualifying holdings.
71.	**Art. 120 to 122**	Limits on holdings outside the financial sector (additional requirement)	**HU** sets out a limit on holdings of more than 51% of subscribed capital of non-financial companies.	For **HU** it is fairly important to retain gold-plating in this area. It is not prudent and may pose additional risks if an institution is holding dominant ownership in non-financial institutions.
72.	**Art. 120.3 to 122**	Limits to participation in a single non-financial undertaking and to the total amount of such participations (stricter requirement)	**IT** applies stricter limits to any participation in a single non-financial undertaking and to the total amount of such participations, which are set below 15% and 60% of the bank's own funds, respectively. In addition, a general prohibition on banks owning more than 15% of the capital and/or voting rights in a non-financial undertaking applies. Also **IT** applies a limit on the value of participations and properties owned within the amount of the banks' own funds (on a consolidated basis). The **IT** regulation is currently under review (a consultative paper has been issued and the new regulation will be finalized by the end of this year). The IT regulation on participations held by banks in non-financial undertakings is based on the traditional principle of separation between banking and commerce (i.e., non-financial corporates). This approach was first adopted subsequent to the difficulties incurred by the "mixed banks" (which combined deposit taking on one side and financing of fixed	For **IT** it is very important to keep this stricter requirement. There is a need to address risks arising from some specific features of the bank-industry relationship within the context of the IT economic system, as well as to ensure consistency with the long-established principle of separation between banking and commerce. In particular, though some of the strictest limits and prohibitions currently in place might be relaxed in the near future, several provisions would be maintained or newly introduced to address risks arising from conflicts of interest (e.g. when granting credit to firms which are under the control or influence of the bank or, vice-versa, when acquiring firms which are already heavily indebted to the bank) as well as from financial innovation (e.g. equity derivatives, private equity investments). In addition, more stringent limits and specific rules will be established on participations held by mutual banks, taking their statutory objectives into account.

			capital in industrial companies on the other) due to the crisis in a number of industrial groups to which those banks were exposed (in both credit and equity) and that, in turn, had large stakes in the same banks. The principle has been confirmed since the implementation of the Second Banking Directive (89/646/EEC).	
73.	**Art. 121 (1st part of 1st sentence)**	Exclusion of certain shares for the purposes of the calculation of the limits for qualifying holdings (non-implementation)	The provision *'Shares held temporarily during a financial reconstruction or rescue operation (...)'* has not been implemented in **PT.**	It is very important for **PT** to keep 'gold plating' in this area as it should be possible for Member States/Competent Authorities to continue to consider that some types of operations should not be excluded from the general rule which limits the qualifying participations outside the financial sector. **PT** considers that excluding these shares from the limits would not favour the principle of limitation on the involvement of credit institutions in activities outside the financial sector. This could also give wrong incentives to credit institutions, by allowing them to engage in such rescue operations outside the financial sector, hence exposing them to undesirable risks.
Pillar 3				
74.	**Art. 148**	Requirement that the information disclosed by banks is verified by the banks' external auditors (additional requirement)	**CY** systematically verifies all returns submitted by banks. In view of the fact that the majority of Pillar 3 disclosures are already included in the Annual Accounts of the banks which are audited by external auditors, it was judged that verification of the additional	For **CY** it is important to include an explicit requirement in the CRD on the accepted means of verification (e.g. internal or external auditors) to contribute to the convergence of banks' practices.

			disclosure requirements by these external auditors would significantly reduce costs vis-à-vis an additional verification process by the Central Bank.	
75.	**Art. 148**	Requirement that the information disclosed by banks is verified by the banks' external auditors (additional requirement)	In **AT**, compliance with pillar 3 requirements is verified by the banks' external auditors. Supervisory steps are undertaken in those cases where the external auditor raises concerns as to the fulfilment of the disclosure obligation.	For **AT** it is important to keep this special requirement for external verification given the large number of credit institutions (in 2009, 864 credit institutions were subject to pillar 3 disclosure requirements).
76.	**Art. 148**	Requirement that institutions publish the information in their Annual Reports (additional requirement)	Although this Article stipulates that credit institutions may determine the appropriate medium, and location to comply with the disclosure requirements, **MT** requires institutions to publish the information in their Annual Reports.	For **MT** it is important to retain this requirement. Having all the disclosures made by credit institutions in their Annual Reports will ensure that all institutions have harmonised disclosures. Furthermore, this requirement indirectly also requires institutions to make the necessary disclosures within 4 months from year end, thus ensuring that the disclosures are made in a timely manner.
77.	**Annex XII, Part 2 point 4 lit. a**	Requirement to disclose quarterly the outcome of their ICAAP and findings of FSA's inspections (additional requirement, higher disclosure frequency)	**DK** requires credit institutions to disclose the outcome of their ICAAP quarterly and also any significant changes (the smallest institutions are required to disclose this only once a year); credit institutions are required to disclose the findings of the Danish FSA's inspections.	This national requirement aims at enhancing transparency and market discipline by giving the public a better insight into the credit institution's financial soundness and whether they are complying with the current legislation.
78.	**No reference**	Outsourcing the Internal control system function	In **RO** the functions of the internal control system cannot be outsourced in order to allow direct access by the	For **RO** it is important to retain this requirement. Outsourcing the internal control system functions

			supervisors to those functions as well as preserving the quality of the activities performed by those functions. The National Bank of Romania is currently analyzing the possibility of allowing the outsourcing of the internal control system functions to the parent credit institution.	only to the parent credit institution permits centralized co-ordination of these functions at group level while keeping the direct contact of the supervisors with credit institution representatives.

ANNEX II

Requirements, where currently ‘gold-plating’ is used or deemed necessary in future with regard to areas addressed by CRD IV.

No.	Reference (Dir. 2006/48/EC unless otherwise stated)	Denomination (kind of ‘gold-plating’)	Description (current examples of ‘gold-plating’)	Assessment (necessity to retain possibility of “gold-plating”)
Own funds				
1.	**Definition of own funds**	Assessment of inclusion of financial instruments in own funds (stricter requirements)	**IT** has taken a rigorous approach in the regulation and assessment of financial instruments to be included in own funds. In particular, **IT** has strictly applied to innovative products the criteria relating to permanence, flexibility of payments and loss absorption (CRD II). Hybrid instruments were subject to stringent limits, significantly lower to the ones set by the CRD II. Furthermore, national regulation provides for specific deductions from own funds. **IT** notes that the use of gold plating in the area of own funds has been mainly motivated by the need to control the process of financial innovation, so as to avoid banks circumventing the fundamental objectives of the regulation (that is to safeguard the quality of supervisory capital and to ensure its full availability in case of need). For example, the prudential filter for	**IT** would favour BTS as the way to harmonise this issue.

			profits made from asset disposals was aimed at ensuring the characteristics of permanence and full availability of own funds.	
2.	**Definition of own funds**	Specific criteria for financial instruments to qualify as non-core Tier 1 capital (additional criteria)	**NL** requires that capital instruments with a hybrid character should only be recognized as non-core Tier 1 capital if they meet specific criteria. This would preserve the actual loss-absorbing character of these instruments.	**NL** notes that the implementation of CRD IV in conjunction with CEBS guidelines on hybrid instruments will eliminate most of the super-equivalency on recognition of capital.
3.	**Definition of own funds**	Prudent approach in the definition of own funds particularly regarding deductions and limits (stricter requirements and additional supervisory approval)	**ES** has taken a prudent approach in the definition of own funds in order to guarantee their quality, particularly regarding deductions and limits: i) Wide definition of investments in own shares and in own capital instruments, including for example those – over certain limits - held by non financial entities within the group or financing provided to third parties to buy the eligible instruments. Rationale: as they reduce capital available to absorb losses (to avoid the double counting of eligible own funds). ii) Deduction of all interim losses, not just material ones. Rationale: more prudent approach because all losses, whether material or not, should be deducted as they reduce capital available to absorb losses. iii) Prior supervisory assessment of	For **ES** is very important to retain 'gold plating' in this area in order to preserve the quality of own funds and their availability to absorb losses. There may be different types of credit institutions, business and markets that may justify the application of specific requirements, deductions or limits to the eligibility of certain instruments (for example, complex hybrids sold in retail markets, eligible instruments issued by operating subsidiaries).

			the fulfilment of the eligibility criteria is required for the eligibility as own funds of non-core Tier 1 and Tier 2 (also Tier3) instruments. To this end, the contract, prospectus and any other legal documentation have to be submitted. Rationale: the formal permission for eligibility ensures legal protection for the issuer and avoids ineligible instruments being included as own funds. iv) The amount of non-core Tier 1 and Tier 2 (also Tier 3) instruments issued by a subsidiary carrying out banking business is limited to an extent related to its own requirements. Rationale: the concern that while non-core Tier 1 and Tier 2 instruments can support the risks in the subsidiary to which it relates they are not available to support risks in the group as a whole (to avoid over-capitalization of the group via subsidiaries).	
4.	**Art. 57**	Inclusion of capital instrument in the calculation of own funds (additional supervisory approval)	In **SI** a bank may include hybrids (non-core Tier 1) and Tier 2 instruments (also Tier 3) in the calculation of own funds provided that it has been granted supervisory (formal) permission. For that purpose, it has to submit the required documentation (contract, prospectus, calculation of own funds and capital	For **SI**, it is very important to retain this requirement. The formal permissions were introduced in order to ensure effective legal protection for the issuers and to avoid the inclusion of ineligible instruments in the calculation.

			requirements and its projection for the period of 3 years and also a schematic illustration with the opinion of the certified external auditor confirming that the required features for the instruments are met).	
5.	**Art. 57**	Issuers of the capital instruments (stricter requirement)	Issues of Tier 1 and Tier 2 (also Tier 3) instruments via special purpose vehicles (SPV) are not allowed in **SI**; only direct issues by the banks are acceptable.	For **SI**, it is very important to retain this requirement in order to mitigate the potential legal and operational risk inherent in SPV structures and to ensure that instruments and transactions are transparent.
6.	**Art. 57**	Holdings of own capital instruments (stricter requirement)	Holdings of own hybrids (non-core Tier 1) and Tier 2 instruments (also Tier 3) are not allowed in **SI** and cannot be accepted as collateral for the bank's exposures, either.	For **SI**, it is very important to retain this requirement. This is more prudent because own instruments (or instruments accepted as collateral) cannot ensure an effective supply of available and loss-absorbing capital.
7.	**Art. 57(a)**	Definition of core capital (stricter requirement)	The **UK** is currently consulting on restricting joint-stock companies' Core Tier 1 instruments to ordinary shares, and on disallowing preferential rights to dividends in Core Tier 1. In theory, the costs are the reduced flexibility and competitive disadvantage for UK firms (relative to EU firms) but in practice there are no immediate costs as currently UK joint stock companies may only use ordinary shares. Benefits: enhancing transparency and minimising investor confusion by prohibiting this subordination effect in Core Tier 1.	For the **UK** it is potentially very important to retain this more prudent requirement, as it prevents the weakening of the quality of Core Tier 1 through financial engineering.
8.	**Art. 57(ca), 63(a), and 66(1a)(a)**	Hybrid Tier 1 capital buckets (stricter requirement)	The Directive allows a 50% limit. Having consulted and confirmed its rules as part of its implementation of	For the **UK** it is potentially very important to retain this requirement. A higher limit could pose increased

	Directive 2009/111/EC		CRD II, the **UK** is to continue with a 15% limit on issues of hybrid Tier 1 via SPV. The benefit of reducing the potential impact of the crystallisation of the risks in SPV issues outweighs the competitive disadvantage and opportunity costs of this measure.	legal and operational risk present due to SPV issues working differently to equivalent direct issues.
9.	**Art. 57 (k)**	Deductions of material interim losses (stricter requirement)	**SI** requires the banks to deduct all losses in the calculation of own funds, not just "material losses".	For **SI**, it is very important to retain this more prudent requirement as all the losses, whether material or not, should be deducted as they reduce the capital available to absorb losses.
10.	**Art. 57 (k)**	Deductions of material interim losses (stricter requirement)	The **UK** requires banks and building societies to deduct all interim losses, not just material ones. At 10% the threshold for materiality is high. Therefore the prudential benefit of this measure outweighs its cost.	For the **UK** it is potentially very important to retain this requirement as the alternative would be imprudent. Deduction of interim losses only once the threshold for materiality is reached is too high a point to recognise the capital impact of these losses.
11.	**Art. 57 (k)**	Deductions of material interim losses (stricter requirement)	The CRD requires that material losses of the current financial year to be deducted. Section 48.1 of the **FI** Credit Institution Act requires that all losses are deducted from original own funds.	In **FI** the current rule simplifies the calculation and achieves better comparability across the institutions, when all losses are deducted. CRD does not specify how to interpret materiality and therefore it is open to different interpretations.
12.	**Art. 61**	Allows the deduction of items other than those listed in points (i) to (r) of Article 57	In **CZ** the discretion in Art. 61 has been used in cases of certain holdings of securities with the aim of preventing/reducing cases of backward financing of the entity's capital. Therefore, a bank may only acquire participating/holding securities issued by a person with a	For **CZ** it is very important to keep 'gold plating' in this area for the reasons stated in the previous column.

			qualifying holding in the bank on certain conditions. In addition, a bank shall not acquire units of a unit trust which is managed, or was established, by an investment company that has a qualifying holding in the bank.	
13.	**Article 61**	Definition of own funds - Items deducted from own funds calculation	**RO** regulations require supplementary deductions from original own funds of: a) the amount of qualifying holdings in non-financial entities held temporarily during a financial reconstruction or rescue operation (the National Bank of Romania is currently analyzing the introduction of such requirements); b) exposures pertaining to non-arm's length transactions, incurred according to the rights offered by the incentives and remuneration packages for the employees of the credit institution's group members, to persons who, at the time of the own funds calculation, are not own personnel anymore, shall be deducted from original own funds of the credit institution.	For **RO** it is important to retain this requirement for financial stability reasons. Rationale: a) the national approach to the amount of qualifying holdings in non-financial entities held temporarily during a financial reconstruction or rescue operation was aimed at ensuring that the financial position of the credit institution is not affected by this decision. Practically this is a way to require credit institutions to increase their own funds (similar to the treatment provided in Article 120.3 for exceeding in exceptional circumstances the qualifying holdings limits). b) This deduction represents the transposition of the Basle Core Principle no.11 "Exposures to related parties" – essential criterion no.5.
14.	**Art. 61**	Definition of own funds - Items deducted from own funds calculation	**NO** inter alia does not include Tier 3 capital in own funds and deducts deferred tax assets and defined benefit pension fund assets from Tier 1 capital. NO also requires hybrid instruments to be directly issued and have write-down features on a going concern basis.	For **NO** it is very important to retain the possibility for countries to have stricter standards than those that will be established by CRD IV, e.g. if the CRD IV does not require write-down features for hybrid instruments classified as equity for accounting purposes. Rationale: If the new

			All own funds items should be able to absorb losses on a going concern basis to reduce the need for public sector bailouts. Also, the risk of loss to all investors in own funds will impose additional market discipline on banks.	requirements of CRD IV take into account the capital level and capital items and deductions of the banks with the weakest capital, it is possible that the countries with the most prudent regulation will find that stricter requirements are necessary.
15.	**Art. 61**	Definition of own funds - Items deducted from own funds calculation (change of content)	**PT** requires additional deductions from original own funds, other than those listed in points (i) to (r) of Article 57, namely: a) Deferred costs related to pension funds liabilities (unrecognised actuarial losses, arising from defined benefit pension plans exceeding the 'corridor' limit, as envisaged in IAS 19); b) Insufficient build-up of provisions; c) Tangible fixed assets (real estate) held in repayment of credit granted by the institution in excess of the limits established.	**PT** considers it very important to retain the possibility of maintaining the current treatment for these items. Due to national specificities, these are material terms. Namely, defined benefit pension plans are widely adopted and therefore the deduction of associated deferred costs can have a significant impact on original own funds. Thus, **PT** believes that it is crucial to leave some room to Member States to adjust the prudential treatment that best fits the characteristics of its jurisdiction in this regard.
16.	**Art. 61(1)**	Definition of own funds - Other deductions from own funds e.g. deferred tax assets and surplus of pensions	In **FI** earmarked assets that are not available for loss absorbance should be deducted from own funds.	Likely these items will be deducted under CRD IV.
17.	**Art. 63 and 64**	Step-ups in Tier 2 instruments (additional requirements)	CRD is silent about the use of step-up clauses in Tier 2 instruments. In **FI** the step-up for upper Tier 2 instruments is recommended to be limited to 1.5 per cent. For lower Tier 2 instruments the step-up is recommended to be a moderate without stating the precise amount.	Any incentives to redeem in Tier 1 and 2 instruments will be prohibited under CRD IV.
18.	**Art. 63 (2) and 64**	Step-ups in Tier 2	There are no rules for step-ups in Tier	For the **UK**, it is potentially very

	(3)	instruments (additional requirements)	2 under the Directive, i.e. step- ups are not prohibited and there are no rules limiting their size. The **UK** rules limit the size of step-ups in Tier 2.	important to retain this requirement. If CRD IV does not prohibit step-ups in Tier 2 and does not prescribe limits, the **UK** will want to be able to continue to apply limits. The **UK** considers limiting the size of step-ups the most prudent treatment and does not perceive its cost to outweigh its benefit. If firms are not limited as to the size of the step-ups in their Tier 2 instruments, this is likely to create significant incentives to redeem, thus potentially weakening the permanence of capital. However, this may not be allowed if CRD IV follows Basel which seeks to prohibit step-ups.
19.	**Art. 64 (3)**	Subordinated loan and original maturity of at least 5 years	In **SI** the size of the step-up in the interest rate on subordinated loans (Tier 2 instrument) is limited. If the step-up does not exceed 1.50 pp, the cumulative discount shall apply over the last five years that remain until the maturity stipulated in the contract. If the step-up exceeds 1.50 pp the 20% cumulative discount shall be applied over the last five years up to the date of possible early repayment.	For **SI**, it is very important to retain this requirement to ensure that Tier 2 instruments are available to absorb losses for a minimum period of time; not having any limit may lead to step-ups that force an issuer to redeem the instrument. In general, 'gold plating´ should be retained in the areas where setting the additional criteria is reasonable from the point of ensuring the quality of capital.
20.	**Art. 66**	Threshold of additional own funds vis-à-vis original own funds (stricter treatment)	Although Article 57(c) includes 'funds for general banking risks' as part of original own funds, in the local Banking rule, **MT** is including such provisions in additional own funds.	For **MT** it is quite important to keep this requirement. Although such funds may be said to be available to the institution for unrestricted and immediate use to cover risks or losses, **MT** feels that it would be

				more prudent to include such a provision (including the collective provision) in additional own funds. As this is the normal practice in a number of Member States, it is suggested that this calculation be amended in the Directive and implemented uniformly by all entities.
21.	**Art. 66**	Threshold of additional own funds vis-à-vis original own funds.	See also **UK** response for Art.s 57(ca), 63(a) and 66.	For the **UK** it is potentially very important to retain this requirement. A higher limit could pose increased legal and operational risk due to SPV issues working differently to equivalent direct issues.
Pillar 3				
22.	**Annex XII**	Pillar 3, esp. in relation to the leverage ratio		The **UK** wishes to reserve its judgement on which aspects of the new CRDIV requirements should be required to be disclosed under Pillar 3 beyond those areas agreed in the final text. However, without prejudice to due process, one more obvious example may be disclosure of the leverage ratio (especially if the effect of (other) counter-cyclical measures are deemed insufficient).