Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (Text with EEA relevance)

REGULATION (EU) 2019/876 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 May 2019

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) In the aftermath of the financial crisis that unfolded in 2007-2008, the Union implemented a substantial reform of the financial services regulatory framework to enhance the resilience of its financial institutions. That reform was largely based on international standards agreed in 2010 by the Basel Committee on Banking Supervision (BCBS), known as the Basel III framework. Among its many measures, the reform package included the adoption of Regulation (EU) No 575/2013 of the European Parliament and of the Council[(4)] and Directive 2013/36/EU of the European Parliament and of the Council[(5)], which strengthened the prudential requirements for credit institutions and investment firms (institutions).

(2) While the reform has rendered the financial system more stable and resilient against many types of possible future shocks and crises, it did not address all identified problems. An important reason for that was that international standard setters, such

as the BCBS and the Financial Stability Board (FSB), had not finished their work on internationally agreed solutions to tackle those problems at the time. Now that work on important additional reforms has been completed, the outstanding problems should be addressed.

(3) In its communication of 24 November 2015 entitled 'Towards the completion of the Banking Union', the Commission recognised the need for further risk reduction and committed bringing forward a legislative proposal that would build on internationally agreed standards. The need to take further concrete legislative steps in terms of reducing risks in the financial sector has also been recognised by the Council in its conclusions of 17 June 2016 and by the European Parliament in its resolution of 10 March 2016 on the Banking Union – Annual Report 2015[(6)].

(4) Risk reduction measures should not only further strengthen the resilience of the European banking system and the markets' confidence in it, but also provide the basis for further progress in completing the banking union. Those measures should also be considered against the background of broader challenges affecting the Union economy, in particular the need to promote growth and jobs at times of uncertain economic outlook. In that context, various major policy initiatives, such as the Investment Plan for Europe and the capital markets union, have been launched in order to strengthen the economy of the Union. It is therefore important that all risk reduction measures interact smoothly with those policy initiatives as well as with broader recent reforms in the financial sector.

(5) The provisions of this Regulation should be equivalent to internationally agreed standards and ensure the continued equivalence of Directive 2013/36/EU and Regulation (EU) No 575/2013 with the Basel III framework. The targeted adjustments in order to reflect Union specificities and broader policy considerations should be limited in terms of scope or time in order not to impinge on the overall soundness of the prudential framework.

(6) Existing risk reduction measures and, in particular, reporting and disclosure requirements should also be improved to ensure that they can be applied in a more proportionate way and that they do not create an excessive compliance burden, especially for smaller and less complex institutions.

(7) A precise definition of small and non-complex institutions is necessary for targeted simplifications of requirements with respect to the application of the principle of proportionality. By itself, a single absolute threshold does not take into account the specificities of the national banking markets. It is therefore necessary for Member States to be able to use their discretion to bring the threshold in line with domestic circumstances and adjust it downwards, as appropriate. Since the size of an institution is not in itself the defining factor for its risk profile, it is also necessary to apply additional qualitative criteria to ensure that an institution is only considered to be a small and non-complex institution and able to benefit from more proportionate rules where the institution fulfils all the relevant criteria.

(8) Leverage ratios contribute to preserving financial stability by acting as a backstop to risk based capital requirements and by constraining the building up of excessive

leverage during economic upturns. The BCBS has revised the international standard on the leverage ratio in order to specify further certain aspects of the design of that ratio. Regulation (EU) No 575/2013 should be aligned with the revised standard so as to ensure a level playing field internationally for institutions established inside the Union but operating outside the Union, and to ensure that leverage ratio remains an effective complement to risk-based own funds requirements. Therefore, a leverage ratio requirement should be introduced to complement the current system of reporting and disclosure of the leverage ratio.

(9) In order not to unnecessarily constrain lending by institutions to corporates and private households and to prevent unwarranted adverse impacts on market liquidity, the leverage ratio requirement should be set at a level where it acts as a credible backstop to the risk of excessive leverage without hampering economic growth.

(10) The European Supervisory Authority (European Banking Authority) (EBA), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[(7)], concluded in its report of 3 August 2016 on the leverage ratio requirement that a Tier 1 capital leverage ratio calibrated at 3 % for any type of credit institution would constitute a credible backstop function. A 3 % leverage ratio requirement was also agreed upon at international level by the BCBS. The leverage ratio requirement should therefore be calibrated at 3 %.

(11) A 3 % leverage ratio requirement would however constrain certain business models and lines of business more than others. In particular, public lending by public development banks and officially supported export credits would be impacted disproportionally. The leverage ratio should therefore be adjusted for those types of exposures. Clear criteria that help ascertain the public mandate of such credit institutions should therefore be set out and cover aspects such as their establishment, the type of activities undertaken, their goal, the guarantee arrangements by public bodies and limits to deposit taking activities. The form and manner of establishment of such credit institutions should remain, however, at the discretion of Member State's central government, regional government or local authority and may consist of setting up a new credit institution, acquisition or take-over, including through concessions and in the context of resolution proceedings, of an already existing entity by such public authorities.

(12) A leverage ratio should also not undermine the provision of central clearing services by institutions to clients. Therefore, the initial margin on centrally cleared derivative transactions received by institutions from their clients and that they pass on to central counterparties (CCPs), should be excluded from the total exposure measure.

(13) In exceptional circumstances that warrant the exclusion of certain exposures to central banks from the leverage ratio and in order to facilitate the implementation of monetary policies, competent authorities should be able to exclude such exposures from the total exposure measure on a temporary basis. For that purpose, they should publicly declare, after consultation with the relevant central bank, that such exceptional circumstances exist. The leverage ratio requirement should be recalibrated commensurately to offset the impact of the exclusion. Such recalibration should ensure the exclusion of risks to

financial stability affecting the relevant banking sectors, and that the resilience provided by the leverage ratio is maintained.

(14) It is appropriate to implement a leverage ratio buffer requirement for institutions identified as global systemically important institutions (G-SIIs) in accordance with Directive 2013/36/EU and with the BCBSs standard on a leverage ratio buffer for global systemically important banks (G-SIBs) published in December 2017. The leverage ratio buffer was calibrated by the BCBS for the specific purpose of mitigating the comparably larger risks to financial stability posed by G-SIBs and, against that background, should only apply to G-SIIs at this stage. However, further analysis should be done to determine whether it would be appropriate to apply the leverage ratio buffer requirement to other systemically important institutions (O-SIIs), as defined in Directive 2013/36/EU, and, if that is the case, in what manner the calibration should be tailored to the specific features of those institutions.

(15) On 9 November 2015, the FSB published the Total Loss-absorbing Capacity (TLAC) Term Sheet (the 'TLAC standard') which was endorsed by the G20 at the November 2015 summit in Turkey. The TLAC standard requires G-SIBs, to hold a sufficient amount of highly loss absorbing (bail-inable) liabilities to ensure smooth and fast absorption of losses and recapitalisation in the event of a resolution. The TLAC standard should be implemented in Union law.

(16) The implementation of the TLAC standard in Union law needs to take into account the existing institution-specific minimum requirement for own funds and eligible liabilities (MREL), set out in Directive 2014/59/EU of the European Parliament and of the Council[(8)]. As the TLAC standard and the MREL pursue the same objective of ensuring that institutions have sufficient loss absorption capacity, the two requirements should be complementary elements of a common framework. Operationally, the harmonised minimum level of the TLAC standard should be introduced into Regulation (EU) No 575/2013 through a new requirement for own funds and eligible liabilities, while the institution-specific add-on for G-SIIs and the institution-specific requirement for non-G-SIIs should be introduced through targeted amendments to Directive 2014/59/EU and Regulation (EU) No 806/2014 of the European Parliament and of the Council[(9)]. The provisions introducing the TLAC standard in Regulation (EU) No 575/2013 should be read together with the provisions that are introduced into Directive 2014/59/EU and Regulation (EU) No 806/2014, and with Directive 2013/36/EU.

(17) In accordance with the TLAC standard that only covers G-SIBs, the minimum requirement for a sufficient amount of own funds and highly loss absorbing liabilities introduced in this Regulation should only apply to G-SIIs. However, the rules concerning eligible liabilities introduced in this Regulation should apply to all institutions, in line with the complementary adjustments and requirements set out in Directive 2014/59/EU.

(18) In line with the TLAC standard, the requirement for own funds and eligible liabilities should apply to resolution entities which are either themselves G-SIIs or are part of a group identified as a G-SII. The requirement for own funds and eligible liabilities should apply on either an individual basis or a consolidated basis, depending on whether

such resolution entities are stand-alone institutions with no subsidiaries or parent undertakings.

(19) Directive 2014/59/EU allows for resolution tools to be used not only for institutions but also for financial holding companies and mixed financial holding companies. Parent financial holding companies and parent mixed financial holding companies should therefore have sufficient loss absorption capacity in the same way as parent institutions.

(20) To ensure the effectiveness of the requirement for own funds and eligible liabilities, it is essential that the instruments held for meeting that requirement have a high loss absorption capacity. Liabilities that are excluded from the bail-in tool referred to in Directive 2014/59/EU do not have that capacity, and neither do other liabilities that, although bail-inable in principle might raise difficulties for being bailed in in practice. Those liabilities should therefore not be considered eligible for the requirement for own funds and eligible liabilities. On the other hand, capital instruments, as well as subordinated liabilities have a high loss absorption capacity. Also, the loss absorption potential of liabilities that rank *pari passu* with certain excluded liabilities should be recognised up to a certain extent, in line with the TLAC standard.

(21) To avoid double counting of liabilities for the purposes of the requirement for own funds and eligible liabilities, rules should be introduced for the deduction of holdings of eligible liabilities items that mirror the corresponding deduction approach already developed in Regulation (EU) No 575/2013 for capital instruments. Under that approach, holdings of eligible liabilities instruments should first be deducted from eligible liabilities and, to the extent there are not sufficient liabilities, those eligible liabilities instruments should be deducted from Tier 2 instruments.

(22) The TLAC standard contains some eligibility criteria for liabilities that are stricter than the current eligibility criteria for capital instruments. To ensure consistency, eligibility criteria for capital instruments should be aligned as regards the non-eligibility of instruments issued through special purpose entities as of 1 January 2022.

(23) It is necessary to provide for a clear and transparent approval process for Common Equity Tier 1 instruments that can contribute to maintaining the high quality of those instruments. To that end, competent authorities should be responsible for approving those instruments before institutions can classify them as Common Equity Tier 1 instruments. However, competent authorities should not need to require prior permission for Common Equity Tier 1 instruments that are issued on the basis of legal documentation already approved by the competent authority and governed by substantially the same provisions as those governing capital instruments for which the institution has received prior permission from the competent authority to classify as Common Equity Tier 1 instruments. In such a case, instead of requesting prior approval, it should be possible for institutions to notify their competent authorities of their intention to issue such instruments. They should do so sufficiently in advance of the instruments' classification as Common Equity Tier 1 instruments to leave time to competent authorities to review the instruments, if necessary. In view of EBA's role in furthering the convergence of supervisory practices and enhancing the quality of own

funds instruments, competent authorities should consult EBA before approving any new form of Common Equity Tier 1 instruments.

(24) Capital instruments are eligible as Additional Tier 1 or Tier 2 instruments only to the extent that they comply with the relevant eligibility criteria. Such capital instruments may consist of equity or liabilities, including subordinated loans that fulfil those criteria.

(25) Capital instruments or parts of capital instruments should only be eligible to qualify as own funds instruments to the extent they are paid up. As long as parts of an instrument are not paid up, those parts should not be eligible to qualify as own funds instruments.

(26) Own funds instruments and eligible liabilities should not be subject to set-off or netting arrangements which would undermine their loss absorption capacity in resolution. This should not mean that the contractual provisions governing the liabilities should contain a clause explicitly stating that the instrument is not subject to set-off or netting rights.

(27) Due to the evolution of the banking sector in an even more digital environment, software is becoming a more important type of asset. Prudently valued software assets, the value of which is not materially affected by the resolution, insolvency or liquidation of an institution, should not be subject to the deduction of intangible assets from Common Equity Tier 1 items. That specification is important, as software is a broad concept that covers many different types of assets, not all of which preserve their value in the situation of a gone concern. In that context, differences in the valuation and amortisation of software assets and the realised sales of such assets should be taken into account. Furthermore, consideration should be given to international developments and differences in the regulatory treatment of investments in software, to different prudential rules that apply to institutions and insurance undertakings, and to the diversity of the financial sector in the Union, including non-regulated entities such as financial technology companies.

(28) In order to avoid cliff-edge effects, it is necessary to grandfather the existing instruments with respect to certain eligibility criteria. For liabilities issued before 27 June 2019, certain eligibility criteria for own funds instruments and eligible liabilities should be waived. Such a grandfathering should apply to liabilities counting towards, where applicable, the subordinated portion of TLAC, and the subordinated portion of the MREL under Directive 2014/59/EU, as well as to liabilities counting towards, where applicable, the non-subordinated portion of TLAC, and the non-subordinated portion of the MREL under Directive 2014/59/EU. For own funds instruments, the grandfathering should end on 28 June 2025.

(29) Eligible liabilities instruments, including those which have a residual maturity of less than one year, can only be redeemed after the resolution authority has granted its prior permission. Such prior permission could also be a general prior permission, in which case the redemption would have to occur within the limited period of time and for a predetermined amount covered by the general prior permission.

(30) Since the adoption of Regulation (EU) No 575/2013, the international standard on the prudential treatment of institutions' exposures to CCPs has been amended in order to improve the treatment of institutions' exposures to qualifying CCPs (QCCPs). Notable

revisions of that standard included the use of a single method for determining the own funds requirement for exposures due to default fund contributions, an explicit cap on the overall own funds requirements applied to exposures to QCCPs, and a more risk-sensitive approach for capturing the value of derivatives in the calculation of the hypothetical resources of a QCCP. At the same time, the treatment of exposures to non-qualifying CCPs was left unchanged. Given that the revised international standards introduced a treatment that is better suited to the central clearing environment, Union law should be amended to incorporate those standards.

(31) In order to ensure that institutions adequately manage their exposures in the form of units or shares in collective investment undertakings (CIUs), the rules spelling out the treatment of those exposures should be risk sensitive and should promote transparency with respect to the underlying exposures of CIUs. The BCBS has therefore adopted a revised standard that sets a clear hierarchy of approaches to calculate risk-weighted exposure amounts for those exposures. That hierarchy reflects the degree of transparency over the underlying exposures. Regulation (EU) No 575/2013 should be aligned with those internationally agreed rules.

(32) For an institution that provides a minimum value commitment to the ultimate benefit of retail clients for an investment in a unit or share in a CIU including as part of a government-sponsored private pension scheme, no payment by the institution or undertaking included in the same scope of prudential consolidation is required unless the value of the customer's shares or units in the CIU falls below the guaranteed amount at one or more points in time specified in the contract. The likelihood of the commitment being exercised is therefore low in practice. Where an institution's minimum value commitment is limited to a percentage of the amount that a client had originally invested into shares or units in a CIU (fixed-amount minimum value commitment) or to an amount that depends on the performance of financial indicators or market indices up to a given time, any currently positive difference between the value of the customer's shares or units and the present value of the guaranteed amount at a given date constitutes a buffer and reduces the risk for the institution to have to pay out the guaranteed amount. All those reasons justify a reduced conversion factor.

(33) For calculating the exposure value of derivative transactions under the counterparty credit risk framework, Regulation (EU) No 575/2013 currently gives institutions the choice between three different standardised approaches: the Standardised Method (SM), the Mark-to-Market Method (MtMM) and the Original Exposure Method (OEM).

(34) Those standardised approaches however do not recognise appropriately the risk-reducing nature of collateral in the exposures. Their calibrations are outdated and they do not reflect the high level of volatility observed during the financial crisis. Neither do they recognise appropriately netting benefits. To address those shortcomings, the BCBS decided to replace the SM and the MtMM with a new standardised approach for computing the exposure value of derivative exposures, the so-called Standardised Approach for Counterparty Credit Risk (SA-CCR). Given that the revised international standards introduced a new standardised approach that is better suited to the central clearing environment, Union law should be amended to incorporate those standards.

(35) The SA-CCR is more risk sensitive than the SM and the MtMM and should therefore lead to own funds requirements that better reflect the risks related to institutions' derivative transactions. At the same time, for some of the institutions which currently use the MtMM the SA-CCR may prove to be too complex and burdensome to implement. For institutions that meet predefined eligibility criteria, and for institutions that are part of a group which meets those criteria on a consolidated basis, a simplified version of the SA-CCR (the 'simplified SA-CCR') should be introduced. Since such a simplified version will be less risk sensitive than the SA-CCR, it should be appropriately calibrated in order to ensure that it does not underestimate the exposure value of derivative transactions.

(36) For institutions which have limited derivative exposures and which currently use the MtMM or the OEM, both the SA-CCR and the simplified SA-CCR could be too complex to implement. The OEM should therefore be reserved as an alternative approach for those institutions that meet predefined eligibility criteria, and for institutions that are part of a group which meets those criteria on a consolidated basis, but should be revised in order to address its major shortcomings.

(37) To guide an institution in its choice of permitted approaches clear criteria should be introduced. Those criteria should be based on the size of the derivative activities of an institution which indicates the degree of sophistication an institution should be able to comply with to compute the exposure value.

(38) During the financial crisis, trading book losses for some institutions established in the Union were substantial. For some of them, the level of capital required against those losses proved insufficient, leading them to seek extraordinary public financial support. Those observations led the BCBS to remove a number of weaknesses in the prudential treatment for trading book positions which are the own funds requirements for market risk.

(39) In 2009, the first set of reforms was finalised at international level and transposed into Union law by means of Directive 2010/76/EU of the European Parliament and of the Council[10]. The 2009 reform, however, did not address the structural weaknesses of the own funds requirements for market risk standards. The lack of clarity about the boundary between the trading and banking books gave opportunities for regulatory arbitrage while the lack of risk sensitivity of the own funds requirements for market risk did not allow to capture the full range of risks to which institutions were exposed.

(40) The BCBS initiated the fundamental review of the trading book (FRTB) to address the structural weaknesses of the own funds requirements for market risk standards. That work led to the publication in January 2016 of a revised market risk framework. In December 2017, the Group of Central Bank Governors and Heads of Supervision agreed to extend the implementation date of the revised market risk framework in order to allow institutions additional time to develop the necessary systems infrastructure but also for the BCBS to address certain specific issues related to the framework. This includes a review of the calibrations of the standardised and internal model approaches to ensure consistency with the BCBSs original expectations. Upon finalisation of that review, and before an impact assessment is performed to assess the impact of the

resulting revisions to the FRTB framework on institutions in the Union, all institutions that would be subject to the FRTB framework in the Union should start reporting the calculations derived from the revised standardised approach. To that end, in order to make the calculations for reporting requirements fully operational in line with international developments, the power to adopt an act in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission. The Commission should adopt that delegated act by 31 December 2019. Institutions should start reporting that calculation no later than one year after the adoption of that delegated act. In addition, institutions that obtain approval to use the revised internal model approach of the FRTB framework for reporting purposes should also report the calculation under the internal model approach three years after its full operationalisation.

(41) Introducing reporting requirements for the FRTB approaches should be considered as a first step towards the full implementation of the FRTB framework in the Union. Taking into account the final revisions to the FRTB framework performed by the BCBS, the results of the impact of those revisions on institutions in the Union and on the FRTB approaches already set out in this Regulation for reporting requirements, the Commission should submit, where appropriate, a legislative proposal to the European Parliament and to the Council by 30 June 2020 on how the FRTB framework should be implemented in the Union to establish the own funds requirements for market risk.

(42) A proportionate treatment for market risk should also apply to institutions with limited trading book activities, allowing more institutions with small trading book activities to apply the credit risk framework for banking book positions as set out under a revised version of the derogation for small trading book business. The principle of proportionality should also be taken into account when the Commission reassesses how institutions with medium-sized trading book business should calculate the own funds requirements for market risk. In particular, the calibration of the own funds requirements for market risk for institutions with medium-sized trading book business should be reviewed in light of developments at international level. In the meantime, institutions with medium-sized trading book business, as well institutions with small trading book business, should be exempted from the reporting requirements under the FRTB.

(43) The large exposures framework should be strengthened to improve the ability of institutions to absorb losses and to better comply with international standards. To that end, a higher quality of capital should be used as a capital base for the calculation of the large exposures limit and exposures to credit derivatives should be calculated in accordance with the SA-CCR. Moreover, the limit on the exposures that G-SIIs may have towards other G-SIIs should be lowered to reduce systemic risks related to interlinks among large institutions and the impact that the default of G-SIIs counterparty may have on financial stability.

(44) While the liquidity coverage ratio (LCR) ensures that institutions will be able to withstand severe stress on a short-term basis, it does not ensure that those institutions will have a stable funding structure on a longer-term horizon. It became thus apparent

that a detailed binding stable funding requirement should be developed at Union level which should be met at all times with the aim of preventing excessive maturity mismatches between assets and liabilities and overreliance on short-term wholesale funding.

(45) Consistent with the BCBSs stable funding standard, rules should, therefore, be adopted to define the stable funding requirement as a ratio of an institution's amount of available stable funding to its amount of required stable funding over a one-year horizon. That binding requirement should be called the net stable funding ratio (NSFR) requirement. The amount of available stable funding should be calculated by multiplying the institution's liabilities and own funds by appropriate factors that reflect their degree of reliability over the one-year horizon of the NSFR. The amount of required stable funding should be calculated by multiplying the institution's assets and off-balance-sheet exposures by appropriate factors that reflect their liquidity characteristics and residual maturities over the one-year horizon of the NSFR.

(46) The NSFR should be expressed as a percentage and set at a minimum level of 100 %, which indicates that an institution holds sufficient stable funding to meet its funding needs over a one-year horizon under both normal and stressed conditions. Should its NSFR fall below the 100 % level, the institution should comply with the specific requirements laid down in Regulation (EU) No 575/2013 for a timely restoration of its NSFR to the minimum level. The application of supervisory measures in cases of non-compliance with the NSFR requirement should not be automatic. Competent authorities should instead assess the reasons for non-compliance with the NSFR requirement before defining potential supervisory measures.

(47) In accordance with the recommendations made by EBA in its report of 15 December 2015 on net stable funding requirements under Article 510 of Regulation (EU) No 575/2013 the rules for calculating the NSFR should be closely aligned with the BCBSs standards, including developments in those standards regarding the treatment of derivative transactions. The necessity to take into account some European specificities to ensure that the NSFR requirement does not hinder the financing of the European real economy, however, justifies adopting some adjustments to the NSFR developed by the BCBS for the definition of the European NSFR requirement. Those adjustments due to the European context are recommended by EBA and relate mainly to specific treatments for: pass-through models in general and covered bonds issuance in particular; trade finance activities; centralised regulated savings; residential guaranteed loans; credit unions; CCPs and central securities depositories (CSDs) not undertaking any significant maturity transformation. Those proposed specific treatments broadly reflect the preferential treatment granted to those activities in the European LCR compared to the LCR developed by the BCBS. Because the NSFR complements the LCR, those two ratios should be consistent in their definition and calibration. This is in particular the case for required stable funding factors applied to LCR high quality liquid assets for the calculation of the NSFR that should reflect the definitions and haircuts of the European LCR, regardless of compliance with the general and operational requirements set out for the LCR calculation that are not appropriate in the one-year horizon of the NSFR calculation.

(48) Beyond European specificities, the treatment of derivative transactions in the NSFR developed by the BCBS could have an important impact on institutions' derivative activities and, consequently, on European financial markets and on the access to some operations for end-users. Derivative transactions and some interlinked transactions, including clearing activities, could be unduly and disproportionately impacted by the introduction of the NSFR developed by BCBS without having been subject to extensive quantitative impact studies and public consultation. The additional requirement to hold between 5 % and 20 % of stable funding against gross derivative liabilities is very widely seen as a rough measure to capture additional funding risks related to the potential increase of derivative liabilities over a one-year horizon and is under review at BCBS level. That requirement, introduced at a level of 5 % in line with the discretion left to jurisdictions by the BCBS to reduce the required stable funding factor on gross derivative liabilities, could then be amended to take into account developments at the BCBS level and to avoid possible unintended consequences such as hindering the good functioning of the European financial markets and the provision of risk hedging tools to institutions and end-users, including corporates, to ensure their financing as an objective of the capital markets union.

(49) The asymmetric treatment by the BCBS of short-term funding, such as repos (stable funding not recognised) and short-term lending, such as reverse repos (some stable funding required – 10 % if collateralised by level 1 high quality liquid assets (HQLA) as defined in the LCR and 15 % for other transactions) with financial customers is intended to discourage extensive short-term funding links between financial customers, because such links are a source of interconnection and make it more difficult to resolve a particular institution without a contagion of risk to the rest of the financial system in case of failure. However, the calibration of the asymmetry is conservative and may affect the liquidity of securities usually used as collateral in short-term transactions, in particular sovereign bonds, as institutions will probably reduce the volume of their operations on repo markets. It could also undermine market-making activities, because repo markets facilitate the management of the necessary inventory, thereby contradicting the objectives of the capital markets union. To allow for sufficient time for institutions to progressively adapt to that conservative calibration, a transitional period, during which the required stable funding factors would be temporarily reduced, should be introduced. The size of the temporary reduction in the required stable funding factors should depend on the types of transactions and on the type of collateral used in those transactions.

(50) In addition to the temporary recalibration of the BCBS required stable funding factor that applies to short-term reverse repo transactions with financial customers secured by sovereign bonds, some other adjustments have proven to be necessary to ensure that the introduction of the NSFR requirement does not hinder the liquidity of sovereign bonds markets. The BCBS 5 % required stable funding factor that applies to level 1 HQLA, including sovereign bonds, implies that institutions would need to hold ready available long-term unsecured funding in such percentage regardless of the time during which they expect to hold such sovereign bonds. This could potentially further incentivise institutions to deposit cash at central banks rather than to act as primary dealers and provide liquidity in sovereign bond markets. Moreover, it is not consistent with the LCR

that recognises the full liquidity of those assets even in time of severe liquidity stress (0 % haircut). The required stable funding factor of level 1 HQLA as defined in the European LCR, excluding extremely high quality covered bonds, should therefore be reduced from 5 % to 0 %.

(51) Furthermore, all level 1 HQLA as defined in the European LCR, excluding extremely high quality covered bonds, received as variation margin in derivative contracts should offset derivative assets while the NSFR developed by the BCBS only accepts cash respecting the conditions of the leverage framework to offset derivative assets. That broader recognition of assets received as variation margin will contribute to the liquidity of sovereign bonds markets, avoid penalising end-users that hold high amounts of sovereign bonds but few cash (like pension funds) and avoid adding additional tensions on the demand for cash on repo markets.

(52) The NSFR requirement should apply to institutions both on an individual and a consolidated basis, unless competent authorities waive the application of the NSFR requirement on an individual basis. Where the application of the NSFR requirement on an individual basis has not been waived, transactions between two institutions belonging to the same group or to the same institutional protection scheme should in principle receive symmetrical available and required stable funding factors to avoid a loss of funding in the internal market and to not impede the effective liquidity management in European groups where liquidity is centrally managed. Such preferential symmetrical treatments should only be granted to intragroup transactions where all the necessary safeguards are in place, on the basis of additional criteria for cross-border transactions, and only with the prior approval of the competent authorities involved as it cannot be assumed that institutions experiencing difficulties in meeting their payment obligations will always receive funding support from other undertakings belonging to the same group or to the same institutional protection scheme.

(53) Small and non-complex institutions should be given the opportunity to use a simplified version of the NSFR requirement. A simplified, less granular version of the NSFR should involve collecting a limited number of data points, which would, reduce the complexity of the calculation for those institutions in accordance with the principle of proportionality, while ensuring that those institutions still maintain a sufficient stable funding factor by means of a calibration that should be at least as conservative as the one of the fully-fledged NSFR requirement. However, competent authorities should be able to require small and non-complex institutions to apply the fully-fledged NSFR requirement instead of the simplified version.

(54) The consolidation of subsidiaries in third countries should take due account of the stable funding requirements applicable in those countries. Accordingly, consolidation rules in the Union should not introduce a more favourable treatment for available and required stable funding in third-country subsidiaries than the treatment which is available under the national law of those third countries.

(55) Institutions should be required to report to their competent authorities in the reporting currency the binding detailed NSFR for all items and separately for items denominated in each significant currency to ensure an appropriate monitoring of possible currencies

mismatches. The NSFR requirement should not subject institutions to any double reporting requirements or to reporting requirements not in line with the rules in force and institutions should be granted sufficient time to get prepared to the entry into force of new reporting requirements.

(56) As the provision of meaningful and comparable information to the market on institutions' common key risk metrics is a fundamental tenet of a sound banking system, it is essential to reduce information asymmetry as much as possible and facilitate comparability of credit institutions' risk profiles within and across jurisdictions. The BCBS published the revised Pillar 3 disclosure standards in January 2015 to enhance the comparability, quality and consistency of institutions' regulatory disclosures to the market. It is, therefore, appropriate to amend the existing disclosure requirements to implement those new international standards.

(57) Respondents to the Commission's call for evidence on the EU regulatory framework for financial services regarded current disclosure requirements as disproportionate and burdensome for smaller institutions. Without prejudice to aligning disclosures more closely with international standards, small and non-complex institutions should be required to produce less frequent and detailed disclosures than their larger peers, thus reducing the administrative burden to which they are subject.

(58) Some clarifications should be made to the remuneration disclosures. The disclosure requirements relating to remuneration as set out in this Regulation should be compatible with the aims of the remuneration rules, namely to establish and maintain, for categories of staff whose professional activities have a material impact on the institution's risk profile, remuneration policies and practices that are consistent with effective risk management. Furthermore, institutions benefitting from a derogation from certain remuneration rules should be required to disclose information concerning such derogation.

(59) Small and medium-sized enterprises (SMEs) are one of the pillars of the Union's economy as they play a fundamental role in creating economic growth and providing employment. Given the fact that SMEs carry a lower systematic risk than larger corporates, capital requirements for SME exposures should be lower than those for large corporates to ensure an optimal bank financing of SMEs. Currently, SME exposures of up to EUR 1,5 million are subject to a 23,81 % reduction in risk weighted exposure amount. Given that the threshold of EUR 1,5 million for an SME exposure is not indicative of a change in riskiness of an SME, reduction in capital requirements should be extended to SME exposures of up to EUR 2,5 million and the part of an SME exposure exceeding EUR 2,5 million should be subject to a 15 % reduction in capital requirements.

(60) Investments in infrastructure are essential to strengthen Europe's competitiveness and to stimulate job creation. The recovery and future growth of the Union economy depends largely on the availability of capital for strategic investments of European significance in infrastructure, in particular broadband and energy networks, as well as transport infrastructure including electromobility infrastructure, particularly in industrial centres; education, research and innovation; and renewable energy and energy efficiency.

The Investment Plan for Europe aims at promoting additional funding to viable infrastructure projects through, inter alia, the mobilisation of additional private sources of finance. For a number of potential investors the main concern is the perceived absence of viable projects and the limited capacity to properly evaluate risk given their intrinsically complex nature.

(61) In order to encourage private and public investments in infrastructure projects it is essential to lay down a regulatory environment that is able to promote high quality infrastructure projects and reduce risks for investors. In particular, own funds requirements for exposures to infrastructure projects should be reduced, provided they comply with a set of criteria able to reduce their risk profile and enhance predictability of cash flows. The Commission should review the provision on high quality infrastructure projects in order to assess: its impact on the volume of infrastructure investments by institutions and the quality of investments having regard to Union's objectives to move towards a low-carbon, climate-resilient and circular economy; and its adequacy from a prudential standpoint. The Commission should also consider whether the scope of those provisions should be extended to infrastructure investments by corporates.

(62) As recommended by EBA, the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council[11] and the European Central Bank, CCPs, due to their distinct business model, should be exempted from the leverage ratio requirement, because they are required to obtain a banking licence simply for the reason of being granted access to overnight central bank facilities and to fulfil their roles as key vehicles for the achievement of important political and regulatory objectives in the financial sector.

(63) Furthermore, exposures of CSDs authorised as credit institutions and exposures of credit institutions designated in accordance with Article 54(2) of Regulation (EU) No 909/2014 of the European Parliament and of the Council[12], such as cash balances resulting from the provision of cash accounts to, and accepting deposits from, participants in a securities settlement system and holders of securities accounts, should be excluded from the total exposure measure as they do not create a risk of excessive leverage as those cash balances are used solely for the purpose of settling transaction in securities settlement systems.

(64) Given that the guidance on additional own funds referred to in Directive 2013/36/EU is a capital target that reflects supervisory expectations, it should not be subject either to mandatory disclosure or to the prohibition of disclosure by competent authorities under Regulation (EU) No 575/2013 or that Directive.

(65) In order to ensure an appropriate definition of some specific technical provisions of Regulation (EU) No 575/2013 and to take into account possible developments in standards at international level, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission: in respect of amending the list of products or services the assets and liabilities of which can be considered as interdependent; in respect of amending the list of multilateral development banks; in respect of amending market risk reporting requirements; and in respect

of specifying additional liquidity requirements. Before the adoption of those acts it is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making[(13)]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(66) Technical standards should ensure the consistent harmonisation of the requirements laid down in Regulation (EU) No 575/2013. As a body with highly specialised expertise, EBA should be mandated to develop draft regulatory technical standards which do not involve policy choices, for submission to the Commission. Regulatory technical standards should be developed in the areas of prudential consolidation, own funds, TLAC, the treatment of exposures secured by mortgages on immovable property, equity investment into funds, the calculation of loss given defaults under the Internal Ratings Based Approach for credit risk, market risk, large exposures and liquidity. The Commission should be empowered to adopt those regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010. The Commission and EBA should ensure that those standards and requirements can be applied by all institutions concerned in a manner that is proportionate to the nature, scale and complexity of those institutions and their activities.

(67) To facilitate the comparability of disclosures, EBA should be mandated to develop draft implementing technical standards establishing standardised disclosure templates covering all substantial disclosure requirements set out in Regulation (EU) No 575/2013. When developing those standards, EBA should take into account the size and complexity of institutions, as well as the nature and level of risk of their activities. EBA should report on where proportionality of the Union supervisory reporting package could be improved in terms of scope, granularity or frequency and, at least, submit concrete recommendations as to how the average compliance costs for small institutions can be reduced by ideally 20 % or more and at least 10 % by means of appropriate simplification of requirements. EBA should be mandated to develop draft implementing technical standards that are to accompany that report. The Commission should be empowered to adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1093/2010.

(68) In order to facilitate institutions' compliance with the rules set out in this Regulation and in Directive 2013/36/EU, as well as with regulatory technical standards, implementing technical standards, guidelines and templates adopted to implement those rules, EBA should develop an IT tool aimed at guiding institutions through the relevant provisions, standards, guidelines and templates in relation to their size and business model.

(69) In addition to the report on possible cost reductions, by 28 June 2020 EBA should – in cooperation with all relevant authorities, namely those authorities that are responsible for prudential supervision, resolution and deposit guarantee schemes and in particular the European System of Central Banks (ESCB) – prepare a feasibility report regarding the development of a consistent and integrated system for collecting statistical data, resolution data and prudential data. Taking into account the previous work of the ESCB on integrated data collection, that report should provide a cost and benefit analysis regarding the creation of a central data collection point for an integrated data reporting system as regards statistical and regulatory data for all institutions located in the Union. Such a system should, amongst other things, use consistent definitions and standards for the data to be collected, and guarantee a reliable and permanent exchange of information between the competent authorities thereby ensuring strict confidentiality of the data collected, strong authentication and management of access right to the system as well as cybersecurity. By centralising and harmonising the European reporting landscape in such a way, the goal is to prevent multiple requests for similar or identical data from different authorities and thereby to significantly reduce the administrative and financial burden, both for the competent authorities and for the institutions. If appropriate, and taking into account the feasibility report by EBA, the Commission should submit to the European Parliament and to the Council a legislative proposal.

(70) The relevant competent or designated authorities should aim at avoiding any form of duplicative or inconsistent use of the macroprudential powers laid down in Regulation (EU) No 575/2013 and Directive 2013/36/EU. In particular, the relevant competent or designated authorities should duly consider whether the measures that they take under Article 124, 164 or 458 of Regulation (EU) No 575/2013 duplicate or are inconsistent with other existing or upcoming measures under Article 133 of Directive 2013/36/EU.

(71) In view of the amendments to the treatment of exposures to QCCPs, specifically to the treatment of institutions' contributions to QCCPs' default funds, laid down in this Regulation, the relevant provisions in Regulation (EU) No 648/2012[(14)] which were introduced therein by Regulation (EU) No 575/2013 and which spell out the calculation of the hypothetical capital of CCPs that is then used by institutions to calculate their own funds requirements should therefore be amended accordingly.

(72) Since the objectives of this Regulation, namely to reinforce and refine already existing Union legal acts ensuring uniform prudential requirements that apply to institutions throughout the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(73) In order to allow for orderly divesting from insurance holdings which are not subject to supplementary supervision, an amended version of the transitional provisions in relation to the exemption from deducting equity holdings in insurance companies should be applied, with retroactive effect from 1 January 2019.

(74) Regulation (EU) No 575/2013 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

(**1**) OJ C 34, 31.1.2018, p. 5.

(**2**) OJ C 209, 30.6.2017, p. 36.

(**3**) Position of the European Parliament of 16 April 2019 (not yet published in the Official Journal) and decision of the Council of 14 May 2019.

(**4**) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

(**5**) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

(**6**) OJ C 50, 9.2.2018, p. 80.

(**7**) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

(**8**) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

(**9**) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

(**10**) Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies (OJ L 329, 14.12.2010, p. 3).

(**11**) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

(**12**) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

(**13**) OJ L 123, 12.5.2016, p. 1.

(**14**) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).