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## **INFORMATION NOTE**

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) No 575/2013 and (EU) 2019/876 as regards adjustments in response to the COVID-19 pandemic – Outcome of the European Parliament's first reading (Brussels, 17-19 June 2020)

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### **I. INTRODUCTION**

A number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the rapporteur, Jonas FERNANDEZ (S&D, ES), presented a compromise amendment (amendment number 5) to the proposal for a Regulation on behalf of the Economic and Monetary Affairs Committee (ECON). This amendment had been agreed during the informal contacts referred to above. In addition, the Greens/EFA and GUE/NGL political groups tabled amendments number 1 and number 4, the Greens/EFA political group tabled amendment number 2, and the GUE/NGL political group tabled amendment number 3.

## II. VOTE

When it voted on 18 June 2020, the plenary adopted the compromise amendment (amendment number 5) to the proposal for a Regulation. No other amendments were adopted. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto<sup>1</sup>.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position bringing to a close the first reading for both Institutions.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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<sup>1</sup> The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

## **Amending Regulations (EU) No 575/2013 and (EU) 2019/876 as regards adjustments in response to the COVID-19 pandemic \*\*\*I**

**European Parliament legislative resolution of 18 June 2020 on the proposal for a regulation of the European Parliament and of the Council amending Regulations (EU) No 575/2013 and (EU) 2019/876 as regards adjustments in response to the COVID-19 pandemic (COM(2020)0310 – C9-0122/2020 – 2020/0066(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2020)0310),
  - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0122/2020),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Central Bank of 20 May 2020<sup>2</sup>,
  - having regard to the opinion of the European Economic and Social Committee of 10 June 2020<sup>3</sup>,
  - having regard to the undertaking given by the Council representative by letter of 10 June 2020 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0113/2020),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>2</sup> OJ C 180, 29.5.2020, p. 4.

<sup>3</sup> Not yet published in the Official Journal.

**P9\_TC1-COD(2020)0066**

**Position of the European Parliament adopted at first reading on 18 June 2020 with a view to the adoption of Regulation (EU) 2020/... of the European Parliament and of the Council amending Regulations (EU) No 575/2013 and (EU) 2019/876 as regards certain adjustments in response to the COVID-19 pandemic**

**(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<sup>4</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>5</sup>,

Acting in accordance with the ordinary legislative procedure<sup>6</sup>,

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<sup>4</sup> OJ C 180, 29.5.2020, p. 4.

<sup>5</sup> Opinion of 10 June 2020 (*not yet published in the Official Journal*).

<sup>6</sup> *Position of the European Parliament of 18 June 2020.*

Whereas:

- (1) Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>7</sup> establishes, together with Directive 2013/36/EU of the European Parliament and of the Council<sup>8</sup>, the prudential regulatory framework for credit institutions and investment firms ('institutions') operating in the Union. Adopted in the aftermath of the financial crisis that unfolded in 2007-2008, and largely based on international standards agreed in 2010 by the Basel Committee on Banking Supervision (BCBS), known as the Basel III framework, that prudential regulatory framework has contributed to enhancing the resilience of institutions operating in the Union and to making them better prepared to deal with potential difficulties, including difficulties stemming from possible future crises.

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<sup>7</sup> 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).

<sup>8</sup> 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).

- (2) Since its entry into force, Regulation (EU) No 575/2013 has been amended several times to address remaining weaknesses in the prudential regulatory framework and to implement some outstanding elements of the global financial services reform that are essential to ensuring the resilience of institutions. Among those changes, Regulation (EU) 2017/2395 of the European Parliament and of the Council<sup>9</sup> introduced transitional arrangements in Regulation (EU) No 575/2013 for mitigating the impact on own funds of the introduction of International Financial Reporting Standard - Financial Instruments (IFRS 9). Regulation (EU) 2019/630 of the European Parliament and of the Council<sup>10</sup> introduced in Regulation (EU) No 575/2013 a requirement for minimum loss coverage for non-performing exposures, the so-called prudential backstop.

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<sup>9</sup> Regulation (EU) 2017/2395 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) No 575/2013 as regards transitional arrangements for mitigating the impact of the introduction of IFRS 9 on own funds and for the large exposures treatment of certain public sector exposures denominated in the domestic currency of any Member State (OJ L 345, 27.12.2017, p. 27).

<sup>10</sup> Regulation (EU) 2019/630 of the European Parliament and of the Council of 17 April 2019 amending Regulation (EU) No 575/2013 as regards minimum loss coverage for non-performing exposures (OJ L 111, 25.4.2019, p. 4).

- (3) Furthermore, Regulation (EU) 2019/876 of the European Parliament and of the Council<sup>11</sup> introduced in Regulation (EU) No 575/2013 some of the final elements of the Basel III framework. Those elements include, among other things, a new definition of the leverage ratio and a leverage ratio buffer, both of which prevent institutions from excessively increasing leverage, as well as provisions for the more favourable prudential treatment of certain software assets and for the more favourable treatment of certain loans backed by pensions or salaries, a revised supporting factor for loans to small and medium-sized enterprises (SMEs) (the ‘SME supporting factor’), and a new adjustment to own funds requirements for credit risk for exposures to entities that operate or finance physical structures or facilities, systems and networks that provide or support essential public services (the ‘infrastructure supporting factor’).

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<sup>11</sup> 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 (OJ L 150, 7.6.2019, p. 1).

- (4) The severe economic shock caused by the COVID-19 pandemic and the exceptional containment measures have had a far-reaching impact on the economy. Businesses are facing disruption in supply chains, temporary closures and reduced demand, while households are confronted with unemployment and a drop in income. Public authorities at Union and Member State level have taken decisive action to support households and solvent undertakings in withstanding the severe but temporary slowdown in economic activity and the resulting liquidity shortages.



- (5) Institutions will have a key role in contributing to the recovery. At the same time they are likely to be impacted by the deteriorating economic situation. ***The European Supervisory Authority (European Banking Authority) (EBA) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>12</sup>, 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<sup>13</sup> and the competent*** authorities have provided temporary capital, liquidity and operational relief to institutions to ensure that institutions can continue to fulfil their role in funding the real economy despite the more challenging environment. ***In particular, the*** Commission, the European Central Bank and ***EBA*** have provided clarity regarding the application of the flexibility already embedded in Regulation (EU) No 575/2013 by issuing interpretations and guidance on the application of the prudential framework in the context of COVID-19. Such guidance includes the interpretative communication of the Commission of 28 April 2020 on the application of the accounting and prudential frameworks to facilitate EU bank lending - Supporting businesses and households amid COVID-19. In reaction to the COVID-19 pandemic, the BCBS has also provided some flexibility in the application of international standards.

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<sup>12</sup> ***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).***

<sup>13</sup> ***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).***

- (6) It is important that institutions employ their capital where it is most needed and the Union regulatory framework facilitates their doing so while ensuring that institutions act prudently. In addition to the flexibility already provided in the existing rules, targeted changes to Regulations (EU) No 575/2013 and (EU) 2019/876 would ensure that the prudential regulatory framework interacts smoothly with the various measures that address the COVID-19 pandemic.
- (7) The extraordinary circumstances of the COVID-19 pandemic and the unprecedented magnitude of challenges triggered calls for immediate action to ensure that institutions are able to channel funds to businesses and households effectively and to *mitigate* the economic shock caused by the COVID-19 pandemic.
- (8) Guarantees provided in the context of the COVID-19 pandemic by national governments or other public entities, which are *considered equally creditworthy* under the Standardised Approach for credit risk ■ set out in ■ Part Three of Regulation (EU) No 575/2013, are comparable *as regards* their risk-mitigating effects to guarantees provided by official export credit agencies as referred to in Article 47c of Regulation (EU) No 575/2013. It is therefore justified to align the minimum coverage requirements for non-performing exposures that benefit from guarantees granted by national governments or other public entities with those for non-performing exposures that benefit from guarantees granted by official export credit agencies. ■

- (9) Evidence *which has* emerged in the context of the COVID-19 pandemic has made it apparent that the possibility of temporarily excluding certain exposures to central banks from the calculation of an institution's total exposure measure, as laid down in Article 429a of Regulation (EU) No 575/2013 as amended by Regulation (EU) 2019/876, could prove essential during a crisis situation. However, the *discretion to exclude such exposures only becomes applicable on 28 June 2021. Therefore, before that date, the competent authorities would not be able to make use of that instrument to address the increase in exposures to central banks that is expected to occur as a result of monetary policy measures employed to mitigate the economic impact of the COVID-19 pandemic. Moreover, the effectiveness of that instrument* appears to be hampered by the reduced flexibility stemming from the offsetting mechanism attached to such temporary exclusions, which would constrain the ability of institutions to increase exposures to central banks in a crisis situation. That could ultimately result in forcing an institution to reduce its level of lending to households and businesses. *Therefore, in* order to avoid any undesired consequences related to the offsetting mechanism and to ensure the effectiveness of that exclusion in the face of possible future shocks and crises, the offsetting mechanism should be modified. *In addition, in order to ensure the availability of that discretion during the current COVID-19 pandemic, the possibility of temporarily excluding certain exposures to central banks should already be available* before the leverage ratio requirement set out in point (d) of Article 92(1) of Regulation (EU) No 575/2013 becomes applicable **■** on 28 June 2021. Pending the application of the amended provisions on the calculation of the leverage ratio as introduced by Regulation (EU) 2019/876, Article 429a should continue to apply in the wording as introduced by Commission Delegated Regulation (EU) 2015/62<sup>14</sup>.

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<sup>14</sup> Commission Delegated Regulation (EU) 2015/62 of 10 October 2014 amending Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to the leverage ratio (OJ L 11, 17.1.2015, p. 37).

- (10) *In 2017, the BCBS revised the calculation of the leverage ratio exposure value of regular-way purchases and sales awaiting settlement in order to ensure that the treatment properly reflects the inherent leverage associated with those trades and that possible accounting differences do not affect the calculation among institutions with comparable positions. In the Union, the revision was introduced by Regulation (EU) 2019/876. However, that more favourable treatment only becomes applicable on 28 June 2021. Therefore, given that the revised calculation would reflect the actual leverage of a transaction more appropriately and, at the same time, would increase the capacity of an institution to lend and to absorb losses amid the COVID-19 pandemic, institutions should already have the possibility to temporarily apply the revised calculation before the provision introduced by Regulation (EU) 2019/876 becomes applicable to all institutions in the Union.*

- (11) Many institutions operating in the Union have been subject to IFRS 9 since 1 January 2018. In line with international standards adopted by the BCBS, Regulation (EU) 2017/2395 introduced in Regulation (EU) No 575/2013 transitional arrangements to mitigate the potentially significant negative impact on institutions' Common Equity Tier 1 capital arising from expected credit loss accounting under IFRS 9.
- (12) The application of IFRS 9 during the economic downturn caused by the COVID-19 pandemic could lead to a sudden significant increase in expected credit loss provisions as, for many exposures, expected losses over their lifetime might need to be calculated. ***The BCBS, EBA and ESMA clarified that institutions are expected not to mechanically apply their existing expected credit loss approaches in exceptional situations such as the COVID-19 pandemic but instead to use the flexibility inherent in IFRS 9, for example to give due weight to long-term economic trends.*** The BCBS agreed on 3 April 2020 to allow more flexibility in the implementation of the transitional arrangements that phase-in the impact of IFRS 9. In order to limit the possible volatility of regulatory capital that might occur if the COVID-19 pandemic results in a significant increase in expected credit loss provisions, it is necessary to extend the transitional arrangements also in Union law.

- (13) To mitigate the potential impact that a sudden increase in expected credit loss provisions could have on institutions' capacity to lend to clients at times when it is most needed, the transitional arrangements should be extended by two years, and institutions should be allowed to fully add back to their Common Equity Tier 1 capital any increase in new expected credit loss provisions that they recognise in 2020 and 2021 for their financial assets that are not credit-impaired. Those changes would bring additional relief from the impact of the COVID-19 pandemic on institutions' possible increase in provisioning needs under IFRS 9 while maintaining the transitional arrangements for the expected credit loss amounts established before the COVID-19 pandemic.
- (14) Institutions that have previously decided *to use or* not to use the transitional arrangements should be able to reverse that decision at any time during the new transitional period, subject to receiving the prior permission of their competent authority. ***The competent authority should ensure that such reversals are not motivated by considerations of regulatory arbitrage.*** Subsequently, and subject to the prior permission of the competent authority, institutions should have the possibility of deciding to stop using the transitional arrangements.

(15) *The extraordinary impact of the COVID-19 pandemic is also observed in relation to the extreme levels of volatility in the financial markets, which together with uncertainty are leading to increased yields for public debt that, in turn, give rise to unrealised losses on institutions' holdings of public debt. In order to mitigate the considerable negative impact of the volatility in central government debt markets during the COVID-19 pandemic on institutions' regulatory capital and therefore on institutions' capacity to lend to clients, a temporary prudential filter that would neutralise that impact should be re-established.*

(16) *Institutions are required to back-test their internal models daily to assess whether those models generate sufficient capital requirements to absorb trading book losses. Failures in the back-testing requirement, also known as overshootings, if above a certain number per year, would result in an additional quantitative multiplier being applied to the own funds requirements for market risk calculated using internal models. The back-testing requirement is highly procyclical in a period of extreme volatility, such as the one caused by the COVID-19 pandemic. As a result of the crisis, the quantitative market risk multiplier applied to internal models has increased significantly. While the Basel III framework for market risk allows competent authorities to smoothen such extraordinary events in market risk internal models, such supervisory discretion is not fully available under Regulation (EU) No 575/2013. Therefore, additional flexibility for competent authorities to mitigate the negative effects of the extreme market volatility observed during the COVID-19 pandemic should be introduced to exclude the overshootings that occurred between 1 January 2020 and 31 December 2021 which are not a result of deficiencies in internal models. Based on the experience from the COVID-19 pandemic, the Commission should assess whether such flexibility should be made available also during future episodes of extreme market volatility.*



- (17) In March 2020, the Group of Central Bank Governors and Heads of Supervision revised the implementation timeline of the final elements of the Basel III framework. While most of the final elements still need to be implemented in Union law, the leverage ratio buffer requirement for global systemically important institutions has already been implemented through the amendments introduced by Regulation (EU) 2019/876. Therefore, and in order to ensure a level playing field internationally for institutions established in the Union and operating also outside the Union, the date of application for the leverage ratio buffer requirement set out in that Regulation should be deferred by one year to 1 January 2023. With the application of the leverage ratio buffer requirement postponed, during the postponement period there would be no consequences resulting from a failure to meet that requirement as set out in Article 141c of Directive 2013/36/EU and no related restriction on distributions set out in Article 141b of that Directive.

- (18) **Regarding** loans granted by credit institutions to pensioners or employees with a permanent contract against the unconditional transfer of part of the borrower's pension or salary to that credit institution, Article 123 of Regulation (EU) No 575/2013 was amended by Regulation (EU) 2019/876 to allow for the more favourable treatment of such loans. The application of such treatment in the context of the COVID-19 pandemic would incentivise institutions to increase lending to employees and pensioners. It is therefore necessary to advance the date of application of that provision so that it can already be used by institutions during the COVID-19 pandemic.
- (19) As the SME supporting factor and the infrastructure supporting factor allow for a more favourable treatment of certain exposures to SMEs and infrastructure, their application in the context of the COVID-19 pandemic would incentivise institutions to increase much-needed lending. It is therefore necessary to advance the date of application of the two supporting factors so that they can already be used by institutions during the COVID-19 pandemic.

- (20) The prudential treatment of certain software assets was amended by Regulation (EU) 2019/876 in order to further support the transition towards a more digitalised banking sector. In the context of the accelerated uptake of digital services as a consequence of public measures adopted to address the COVID-19 pandemic, the date of application of those changes should be advanced.
- (21) *Public financing through the issuance of government bonds denominated in the domestic currency of another Member State might be necessary to support measures to fight the consequences of the COVID-19 pandemic. To avoid unnecessary constraints on institutions investing in such bonds, it is appropriate to reintroduce the transitional arrangements for exposures to central governments and central banks where those exposures are denominated in the domestic currency of another Member State with respect to the treatment of such exposures under the credit risk framework and to prolong the transitional arrangements with respect to the treatment of such exposures under the large exposure limits.*

- (22) *In the exceptional circumstances triggered by the COVID-19 pandemic, stakeholders are expected to contribute to efforts towards recovery. EBA, the European Central Bank and other competent authorities have issued recommendations for institutions to suspend dividend payments and share buybacks during the COVID-19 pandemic. To ensure the consistent application of such recommendations, competent authorities should make full use of their supervisory powers, including powers to impose binding restrictions on distributions for institutions or limitations on variable remuneration, where appropriate, in accordance with Directive 2013/36/EU. Based on the experience from the COVID-19 pandemic, the Commission should assess whether additional binding powers should be granted to competent authorities to impose restrictions on distributions in exceptional circumstances.*
- (23) Since the objective of this Regulation, namely maximising the capacity of institutions to lend and to absorb losses related to the COVID-19 pandemic, while still ensuring the continued resilience of such institutions, cannot be sufficiently achieved by the Member States but can rather, by reason of its 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 that objective.

- (24) For the extraordinary support measures adopted to alleviate the impact of the COVID-19 pandemic to be fully effective with regard to keeping the banking sector more resilient and providing an incentive to the institutions to continue lending, it is necessary for the alleviating effect of those measures to be immediately reflected in the way in which regulatory capital requirements are determined. Having regard to the urgency of those adjustments to the prudential regulatory framework, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*.
- (25) In view of the urgency entailed by the exceptional circumstances caused by the COVID-19 pandemic, it was considered to be appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.
- (26) Regulations (EU) No 575/2013 and (EU) 2019/876 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1  
Amendments to Regulation (EU) No 575/2013

Regulation (EU) No 575/2013 is amended as follows:

(1) *in Article 47c(4), the introductory phrase is replaced by the following:*

***“4. By way of derogation from paragraph 3 of this Article, the following factors shall apply to the part of the non-performing exposure guaranteed or insured by an official export credit agency or guaranteed or counter-guaranteed by an eligible protection provider referred to in points (a) to (e) of Article 201(1), unsecured exposures to which would be assigned a risk weight of 0 % under Chapter 2 of Title II of Part Three:”;***

(2) *in Article 114, paragraph 6 is deleted;*

(3) *in Article 150(1), point (ii) of point (d) of the first subparagraph is replaced by the following:*

***“(ii) exposures to central governments and central banks are assigned a 0 % risk weight under Article 114(2) or (4);”;***

- (4) Article 429a, as amended by Regulation (EU) 2019/876, is amended as follows:
- (a) in paragraph 1, the introductory phrase of point (n) is replaced by the following:
- “(n) the following exposures to the institution's central bank, subject to the conditions set out in paragraphs 5 and 6.”;
- (b) *paragraph 5 is amended as follows:*
- (i) *the introductory sentence is replaced by the following:*
- “Institutions may exclude the exposures listed in point (n) of paragraph 1 where all of the following conditions are met:”;*

*(ii) the following point is added:*

*“(c) the institution's competent authority has determined, after consultation with the relevant central bank, the date when the exceptional circumstances are deemed to have started and publicly announced that date; that date shall be set at the end of a quarter.”;*

*(c) in paragraph 7, the definitions of ‘EM<sub>LR</sub>’ and ‘CB’ are replaced by the following:*

*“EM<sub>LR</sub> = the institution's total exposure measure as calculated in accordance with Article 429(4), including the exposures excluded in accordance with point (n) of paragraph 1 of this Article, on the **date** referred to in point (c) of paragraph 5 of this Article; and*

*CB = the **daily average** total value of the institution’s exposures to its central bank, **calculated over the full reserve maintenance period of the central bank immediately preceding the date referred to in point (c) of paragraph 5**, that are eligible to be excluded in accordance with point (n) of paragraph 1 ■”;*

*(5) Article 467 is deleted;*



(6) *Article 468 is replaced by the following:*

***“Article 468***

***Temporary treatment of unrealised gains and losses measured at fair value through other comprehensive income in view of the COVID-19 pandemic***

1. ***By way of derogation from Article 35, during the period from 1 January 2020 to 31 December 2022 (the 'period of temporary treatment'), institutions may remove from the calculation of their Common Equity Tier 1 items the amount A, determined in accordance with the following formula:***

$$A = a \cdot f$$

***where:***

***a = the amount of unrealised gains and losses accumulated since 31 December 2019 accounted for as “fair value changes of debt instruments measured at fair value through other comprehensive income” in the balance sheet, corresponding to exposures to central governments, to regional governments or to local authorities referred to in Article 115(2) of this Regulation and to public sector entities referred to in Article 116(4) of this Regulation, excluding those financial assets that are credit-impaired as defined in Appendix A to the Annex to Commission Regulation (EC) No 1126/2008 (‘Annex relating to IFRS 9’); and***

*f = the factor applicable for each reporting year during the period of temporary treatment in accordance with paragraph 2.*

2. *Institutions shall apply the following factors f to calculate the amount A referred in paragraph 1:*
  - (a) *1 during the period from 1 January 2020 to 31 December 2020;*
  - (b) *0,7 during the period from 1 January 2021 to 31 December 2021;*
  - (c) *0,4 during the period from 1 January 2022 to 31 December 2022.*
3. *Where an institution decides to apply the temporary treatment set out in paragraph 1, it shall inform the competent authority of its decision at least 45 days before the remittance date for the reporting of the information based on that treatment. Subject to the prior permission of the competent authority, the institution may reverse its initial decision once during the period of temporary treatment. Institutions shall publicly disclose if they apply that treatment.*

4. *Where an institution removes an amount of unrealised losses from its Common Equity Tier 1 items in accordance with paragraph 1 of this Article, it shall recalculate all requirements laid down in this Regulation and in Directive 2013/36/EU that are calculated using any of the following items:*

(a) *the amount of deferred tax assets that is deducted from Common Equity Tier 1 items in accordance with point (c) of Article 36(1) or risk weighted in accordance with Article 48(4);*

(b) *the amount of specific credit risk adjustments.*

*When recalculating the relevant requirement, the institution shall not take into account the effects that the expected credit loss provisions relating to exposures to central governments, to regional governments or to local authorities referred to in Article 115(2) of this Regulation and to public sector entities referred to in Article 116(4) of this Regulation, excluding those financial assets that are credit-impaired as defined in Appendix A to the Annex relating to IFRS 9, have on those items.*

**5. During the periods set out in paragraph 2 of this Article, in addition to disclosing the information required in Part Eight, institutions that have decided to apply the temporary treatment set out in paragraph 1 of this Article shall disclose the amounts of own funds, Common Equity Tier 1 capital and Tier 1 capital, the total capital ratio, the Common Equity Tier 1 capital ratio, the Tier 1 capital ratio, and the leverage ratio they would have in case they were not to apply that treatment.”;**

(7) Article 473a is amended as follows:

(a) paragraph 1 is amended as follows:

(i) in the first subparagraph, the introductory phrase is replaced by the following:

“1. By way of derogation from Article 50 and until the end of the transitional periods set out in paragraphs 6 and 6a of this Article, the following may include in their Common Equity Tier 1 capital the amount calculated in accordance with this paragraph.”;

- (ii) the second subparagraph is replaced by the following:

“The amount referred to in the first subparagraph shall be calculated as the sum of the following:

- (a) for exposures which are subject to risk weighting in accordance with Chapter 2 of Title II of Part Three, the amount ( $AB_{SA}$ ) calculated in accordance with the following formula:

$$AB_{SA} = (A_{2,SA} - t_1) \cdot f_1 + (A_{4,SA} - t_2) \cdot f_2 + (A_{SA}^{old} - t_3) \cdot f_1$$

where:

$A_{2,SA}$  = the amount calculated in accordance with paragraph 2;

$A_{4,SA}$  = the amount calculated in accordance with paragraph 4 based on the amounts calculated in accordance with paragraph 3;

$$A_{SA}^{old} = \max\{P_{1.1.2020}^{SA} - P_{1.1.2018}^{SA}; 0\};$$

$P_{1.1.2020}^{SA}$  = the sum of the 12-month expected credit losses determined in accordance with paragraph 5.5.5 of the Annex relating to IFRS 9 and the amount of the loss allowance for lifetime expected credit losses determined in accordance with paragraph 5.5.3 of the Annex relating to IFRS 9, excluding the loss allowance for lifetime expected credit losses for financial assets that are credit-impaired as defined in Appendix A to the Annex relating to IFRS 9, on 1 January 2020;

$P_{1.1.2018}^{SA}$  = the sum of the 12-month expected credit losses determined in accordance with paragraph 5.5.5 of the Annex relating to IFRS 9 and the amount of the loss allowance for lifetime expected credit losses determined in accordance with paragraph 5.5.3 of the Annex relating to IFRS 9, excluding the loss allowance for lifetime expected credit losses for financial assets that are credit-impaired as defined in Appendix A to the Annex relating to IFRS 9, on 1 January 2018 or on the date of the initial application of IFRS 9, whichever is later;

$f_1$  = the applicable factor laid down in paragraph 6;

$f_2$  = the applicable factor laid down in paragraph 6a;

$t_1$  = the increase of Common Equity Tier 1 capital that is due to tax deductibility of the amount  $A_{2,SA}$ ;

$t_2$  = the increase of Common Equity Tier 1 capital that is due to tax deductibility of the amount  $A_{4,SA}$ ;

***$t_3$  = the increase of Common Equity Tier 1 capital that is due to tax deductibility of the amount  $A_{SA}^{old}$ ;***

(b) for exposures which are subject to risk weighting in accordance with Chapter 3 of Title II of Part Three, the amount ( $AB_{IRB}$ ) calculated in accordance with the following formula:

$$AB_{IRB} = (A_{2,IRB} - t_1) \cdot f_1 + (A_{4,IRB} - t_2) \cdot f_2 + (A_{IRB}^{old} - t_3) \cdot f_1$$

where:

$A_{2,IRB}$  = the amount calculated in accordance with paragraph 2 which is adjusted in accordance with point (a) of paragraph 5;

$A_{4,IRB}$  = the amount calculated in accordance with paragraph 4 based on the amounts calculated in accordance with paragraph 3 which are adjusted in accordance with points (b) and (c) of paragraph 5;

$$A_{IRB}^{old} = \max\{P_{1.1.2020}^{IRB} - P_{1.1.2018}^{IRB}; 0\};$$

$P_{1.1.2020}^{IRB}$  = *the sum of the 12-month expected credit losses determined in accordance with paragraph 5.5.5 of the Annex relating to IFRS 9 and the amount of the loss allowance for lifetime expected credit losses determined in accordance with paragraph 5.5.3 of the Annex relating to IFRS 9, excluding the loss allowance for lifetime expected credit losses for financial assets that are credit-impaired, as defined in Appendix A to the Annex relating to IFRS 9, reduced by the sum of related expected loss amounts for the same exposures calculated in accordance with Article 158(5), (6) and (10) of this Regulation, on 1 January 2020. Where the calculation results in a negative number, the institution shall set the value of  $P_{1.1.2020}^{IRB}$  to zero;*



**$P_{1.1.2018}^{IRB}$  = the sum of the 12-month expected credit losses determined in accordance with paragraph 5.5.5 of the Annex relating to IFRS 9 and the amount of the loss allowance for lifetime expected credit losses determined in accordance with paragraph 5.5.3 of the Annex relating to IFRS 9, excluding the loss allowance for lifetime expected credit losses for financial assets that are credit-impaired, as defined in Appendix A to the Annex relating to IFRS 9, on 1 January 2018 or on the date of the initial application of IFRS 9, whichever is later, reduced by the sum of related expected loss amounts for the same exposures calculated in accordance with Article 158(5), (6) and (10) of this Regulation. Where the calculation results in a negative number, the institution shall set the value of  $P_{1.1.2018}^{IRB}$  as equal to zero;**

$f_1$  = the applicable factor laid down in paragraph 6;

$f_2$  = the applicable factor laid down in paragraph 6a;

$t_1$  = the increase of Common Equity Tier 1 capital that is due to tax deductibility of the amount  $A_{2,IRB}$ ;

$t_2$  = the increase of Common Equity Tier 1 capital that is due to tax deductibility of the amount  $A_{4,IRB}$ ;

*$t_3$  = the increase of Common Equity Tier 1 capital that is due to tax deductibility of the amount  $A_{IRB}^{old}$ .*”;

(b) in paragraph 3, *points (a) and (b) are* replaced by the following:

*“(a) the sum of the 12-month expected credit losses determined in accordance with paragraph 5.5.5 of the Annex relating to IFRS 9 and the amount of the loss allowance for lifetime expected credit losses determined in accordance with paragraph 5.5.3 of the Annex relating to IFRS 9, excluding the loss allowance for lifetime expected credit losses for financial assets that are credit-impaired as defined in Appendix A to the Annex relating to IFRS 9, on the reporting date and, where Article 468 of this Regulation applies, excluding expected credit losses determined for exposures measured at fair value through other comprehensive income in accordance with paragraph 4.1.2 A of the Annex relating to IFRS 9;*

- (b) the sum of the 12-month expected credit losses determined in accordance with paragraph 5.5.5 of the Annex relating to IFRS 9 and the amount of the loss allowance for lifetime expected credit losses determined in accordance with paragraph 5.5.3 of the Annex relating to IFRS 9, excluding the loss allowance for lifetime expected credit losses for financial assets that are credit-impaired as defined in Appendix A to the Annex relating to IFRS 9 ***and, where Article 468 of this Regulation applies, excluding expected credit losses determined for exposures measured at fair value through other comprehensive income in accordance with paragraph 4.1.2 A of the Annex relating to IFRS 9, on 1 January 2020 or on the date of the initial application of IFRS 9, whichever is later.***”;

(c) in paragraph 5, *points (b) and (c) are* replaced by the following:

*“(b) institutions shall replace the amount calculated in accordance with point (a) of paragraph 3 of this Article with the sum of the 12-month expected credit losses determined in accordance with paragraph 5.5.5 of the Annex relating to IFRS 9 and the amount of the loss allowance for lifetime expected credit losses determined in accordance with paragraph 5.5.3 of the Annex relating to IFRS 9, excluding the loss allowance for lifetime expected credit losses for financial assets that are credit-impaired, as defined in Appendix A to the Annex relating to IFRS 9, and, where Article 468 of this Regulation applies, excluding expected credit losses determined for exposures measured at fair value through other comprehensive income in accordance with paragraph 4.1.2 A of the Annex relating to IFRS 9, reduced by the sum of related expected loss amounts for the same exposures calculated in accordance with Article 158(5), (6) and (10) of this Regulation on the reporting date. Where the calculation results in a negative number, the institution shall set the value of the amount referred to in point (a) of paragraph 3 of this Article as equal to zero;*

- (c) institutions shall replace the amount calculated in accordance with point (b) of paragraph 3 of this Article with the sum of the 12-month expected credit losses determined in accordance with paragraph 5.5.5 of the Annex relating to IFRS 9 and the amount of the loss allowance for lifetime expected credit losses determined in accordance with paragraph 5.5.3 of the Annex relating to IFRS 9, excluding the loss allowance for lifetime expected credit losses for financial assets that are credit-impaired, as defined in Appendix A to the Annex relating to IFRS 9, **and, where Article 468 of this Regulation applies, excluding expected credit losses determined for exposures measured at fair value through other comprehensive income in accordance with paragraph 4.1.2 A of the Annex relating to IFRS 9, on 1 January 2020 or on the date of the initial application of IFRS 9, whichever is later, reduced by the sum of related expected loss amounts for the same exposures calculated in accordance with Article 158(5), (6) and (10) of this Regulation on 1 January 2020 or on the date of the initial application of IFRS 9, whichever is later.** Where the calculation results in a negative number, the institution shall set the value of the amount referred to in point (b) of paragraph 3 of this Article as equal to zero.”;

(d) paragraph 6 is replaced by the following:

“6. Institutions shall apply the following factors  $f_1$  to calculate the amounts  $AB_{SA}$  and  $AB_{IRB}$  referred to in points (a) and (b) of the second subparagraph of paragraph 1 respectively:

- (a) 0,7 during the period from 1 January 2020 to 31 December 2020;
- (b) 0,5 during the period from 1 January 2021 to 31 December 2021;
- (c) 0,25 during the period from 1 January 2022 to 31 December 2022;
- (d) 0 during the period from 1 January 2023 to 31 December 2024.

Institutions whose financial year commences after 1 January 2020 but before 1 January 2021 shall adjust the dates in points (a) to (d) of the first subparagraph so that they correspond to their financial year, shall report the adjusted dates to their competent authority and shall publicly disclose them.

Institutions which start to apply accounting standards as referred to in paragraph 1 on or after 1 January 2021 shall apply the relevant factors in accordance with points (b) to (d) of the first subparagraph starting with the factor corresponding to the year of the first application of those accounting standards.”;

(e) the following paragraph is inserted:

“6a. Institutions shall apply the following factors  $f_2$  to calculate the amounts  $AB_{SA}$  and  $AB_{IRB}$  referred to in points (a) and (b) of the second subparagraph of paragraph 1 respectively:

- (a) 1 during the period from 1 January 2020 to 31 December 2020;
- (b) 1 during the period from 1 January 2021 to 31 December 2021;
- (c) 0,75 during the period from 1 January 2022 to 31 December 2022;
- (d) 0,5 during the period from 1 January 2023 to 31 December 2023;
- (e) 0,25 during the period from 1 January 2024 to 31 December 2024.

Institutions whose financial year commences after 1 January 2020 but before 1 January 2021 shall adjust the dates in points (a) to (e) of the first subparagraph so that they correspond to their financial year, shall report the adjusted dates to their competent authority and shall publicly disclose them.

Institutions which start to apply accounting standards as referred to in paragraph 1 on or after 1 January 2021 shall apply the relevant factors in accordance with points (b) to (e) of the first subparagraph starting with the factor corresponding to the year of the first application of those accounting standards.”;

(f) ■ the following *paragraph* is *inserted*:

“7a. *By way of derogation from point (b) of paragraph 7 of this Article, when recalculating the requirements laid down in this Regulation and in Directive 2013/36/EU, institutions may assign a risk weight of 100 % to the amount AB<sub>SA</sub> referred to in point (a) of the second subparagraph of paragraph 1 of this Article. For the purposes of calculating the total exposure measure referred to in Article 429(4) of this Regulation, institutions shall add the amounts AB<sub>SA</sub> and AB<sub>IRB</sub> referred to in points (a) and (b) of the second subparagraph of paragraph 1 of this Article to the total exposure measure.*



***Institutions may choose only once whether to use the calculation set out in point (b) of paragraph 7 or the calculation set out in the first subparagraph of this paragraph. Institutions shall disclose their decision.”;***

(g) paragraph 8 is replaced by the following:

“8. During the periods set out in paragraphs 6 and 6a of this Article, in addition to disclosing the information required in Part Eight, institutions that have decided to apply the transitional arrangements set out in this Article ***shall report to competent authorities and*** shall disclose the amounts of own funds, Common Equity Tier 1 capital and Tier 1 capital, the Common Equity Tier 1 capital ratio, the Tier 1 capital ratio, the total capital ratio and the leverage ratio they would have in case they were not to apply this Article.”;

(h) paragraph 9 is amended as follows:

(i) the first and the second subparagraphs are replaced by the following:

“9. An institution shall decide whether to apply the arrangements set out in this Article during the transitional period and shall inform the competent authority of its decision by 1 February 2018. Where an institution has received the prior permission of the competent authority, it may reverse its decision during the transitional period. Institutions shall publicly disclose any decision taken in accordance with this subparagraph.

An institution that has decided to apply the transitional arrangements set out in this Article may decide not to apply paragraph 4 in which case it shall inform the competent authority of its decision by 1 February 2018. In such a case, the institution shall set  $A_{4,SA}$ ,  $A_{4,IRB}$ ,  $A_{SA}^{old}$ ,  $A_{IRB}^{old}$ ,  $t_2$  and  $t_3$  referred to in paragraph 1 as equal to zero. Where an institution has received the prior permission of the competent authority, it may reverse its decision during the transitional period. Institutions shall publicly disclose any decision taken in accordance with this subparagraph.”;

(ii) the following subparagraphs are added:

“An institution that has decided to apply the transitional arrangements set out

in this Article may decide not to apply paragraph 2 in which case it shall inform the competent authority of its decision without delay. In such a case, the institution shall set  $A_{2,SA}, A_{2,IRB}$  and  $t_1$  referred to in paragraph 1 as equal to zero. An institution may reverse its decision during the transitional period provided it has received the prior permission of the competent authority.

Competent authorities shall notify EBA at least on an annual basis of the application of this Article by institutions under their supervision.”;

(8) *in Article 495, paragraph 2 is deleted;*

(9) *the following articles are inserted:*

“Article 500a

*Temporary treatment of public debt issued in the currency of another Member State*

1. *By way of derogation from Article 114(2), until 31 December 2024, for exposures to the central governments and central banks of Member States, where those exposures are denominated and funded in the domestic currency of another Member State, the following apply:*

(a) *until 31 December 2022, the risk weight applied to the exposure values shall be 0 % of the risk weight assigned to those exposures in accordance with Article 114(2);*

(b) *in 2023, the risk weight applied to the exposure values shall be 20 % of the risk weight assigned to those exposures in accordance with Article 114(2);*

- (c) *in 2024, the risk weight applied to the exposure values shall be 50 % of the risk weight assigned to those exposures in accordance with Article 114(2).*
2. *By way of derogation from Articles 395(1) and 493(4), competent authorities may allow institutions to incur exposures referred to in paragraph 1 of this Article, up to the following limits:*
- (a) *100 % of the institution's Tier 1 capital until 31 December 2023;*
- (b) *75 % of the institution's Tier 1 capital between 1 January and 31 December 2024;*
- (c) *50 % of the institution's Tier 1 capital between 1 January and 31 December 2025.*

*The limits referred to in points (a), (b) and (c) of the first subparagraph of this paragraph shall apply to exposure values after taking into account the effect of the credit risk mitigation in accordance with Articles 399 to 403.*

3. *By way of derogation from point (ii) of point (d) of Article 150(1), after receiving the prior permission of the competent authorities and subject to the conditions laid down in Article 150, institutions may also apply the Standardised Approach to exposures to central governments and central banks, where those exposures are assigned a 0 % risk weight under paragraph 1 of this Article.*

#### *Article 500b*

##### *Temporary exclusion of certain exposures to central banks from the total exposure measure in view of the COVID-19 pandemic*

1. *By way of derogation from Article 429(4), until 27 June 2021, an institution may exclude from its total exposure measure the following exposures to the institution's central bank, subject to the conditions set out in paragraphs 2 and 3 of this Article:*
  - (a) *coins and banknotes constituting legal currency in the jurisdiction of the central bank;*

- (b) *assets representing claims on the central bank, including reserves held at the central bank.*

*The amount excluded by the institution shall not exceed the daily average amount of the exposures listed in points (a) and (b) of the first subparagraph over the most recent full reserve maintenance period of the institution's central bank.*

2. *An institution may exclude the exposures listed in paragraph 1 where the institution's competent authority has determined, after consultation with the relevant central bank, and publicly declared that exceptional circumstances exist that warrant the exclusion in order to facilitate the implementation of monetary policies.*

*The exposures to be excluded under paragraph 1 shall meet both of the following conditions:*

- (a) *they are denominated in the same currency as the deposits taken by the institution;*

*(b) their average maturity does not significantly exceed the average maturity of the deposits taken by the institution.*

*An institution that excludes exposures to its central bank from its total exposure measure in accordance with paragraph 1 shall also disclose the leverage ratio it would have if it did not exclude those exposures.*

*Article 500c*

*Exclusion of overshootings from the calculation of the back-testing addend in view of the COVID-19 pandemic*

*By way of derogation from Article 366(3), competent authorities may, in exceptional circumstances and in individual cases, permit institutions to exclude the overshootings evidenced by the institution's back-testing on hypothetical or actual changes from the calculation of the addend set out in Article 366(3), provided that those overshootings do not result from deficiencies in the internal model and provided that they occurred between 1 January 2020 and 31 December 2021.*

*Article 500d*

*Temporary calculation of the exposure value of regular-way purchases and sales awaiting settlement in view of the COVID-19 pandemic*

- 1. By way of derogation from Article 429(4), until 27 June 2021, institutions may calculate the exposure value of regular-way purchases and sales awaiting settlement in accordance with paragraphs 2, 3 and 4 of this Article.*
- 2. Institutions shall treat cash related to regular-way sales and securities related to regular-way purchases which remain on the balance sheet until the settlement date as assets in accordance with point (a) of Article 429(4).*
- 3. Institutions that, in accordance with the applicable accounting framework, apply trade date accounting to regular-way purchases and sales which are awaiting settlement shall reverse out any offsetting between cash receivables for regular-way sales awaiting settlement and cash payables for regular-way purchases awaiting settlement allowed under that accounting framework. After institutions have reversed out the accounting offsetting, they may offset between those cash receivables and cash payables where the related regular-way sales and purchases are both settled on a delivery-versus-payment basis.*



4. *Institutions that, in accordance with the applicable accounting framework, apply settlement date accounting to regular-way purchases and sales which are awaiting settlement shall include in the total exposure measure the full nominal value of commitments to pay related to regular-way purchases.*

*Institutions may offset the full nominal value of commitments to pay related to regular-way purchases by the full nominal value of cash receivables related to regular-way sales awaiting settlement only where both of the following conditions are met:*

- (a) both the regular-way purchases and sales are settled on a delivery-versus-payment basis;*
  - (b) the financial assets bought and sold that are associated with cash payables and receivables are measured at fair value through profit or loss and included in the institution's trading book.*
5. *For the purposes of this Article, 'regular-way purchase or sale' means a purchase or sale of a security under a contract for which the terms require the delivery of the security within the period established generally by law or convention in the marketplace concerned.";*

(10) *the following article is inserted:*

***"Article 518b***

***Report on overshootings and supervisory powers to limit distributions***

***By 31 December 2021, the Commission shall report to the European Parliament and to the Council on whether exceptional circumstances that trigger serious economic disturbance in the orderly functioning and integrity of financial markets justify:***

- (a) during such periods, permitting competent authorities to exclude from institutions' market risk internal models overshootings that do not result from deficiencies in those models;***
- (b) during such periods, granting additional binding powers to competent authorities to impose restrictions on distributions by institutions.***

***The Commission shall consider further measures, if appropriate."***

Article 2  
Amendments to Regulation (EU) 2019/876

Article 3 of Regulation (EU) 2019/876 is amended as follows:

(1) the following paragraph is inserted:

“3a. The following points of Article 1 of this Regulation shall apply from ... [date of entry into force of this amending Regulation]:

- (a) point (59), as regards the provisions on the treatment of certain loans granted by credit institutions to pensioners or employees laid down in Article 123 of Regulation (EU) No 575/2013;
- (b) point (133), as regards the provisions on adjustment of risk-weighted non-defaulted SME exposures laid down in Article 501 of Regulation (EU) No 575/2013;

(c) point (134), as regards the provisions on adjustment to own funds requirements for credit risk for exposures to entities that operate or finance physical structures or facilities, systems and networks that provide or support essential public services laid down in Article 501a of Regulation (EU) No 575/2013.”;

(2) paragraph 5 is replaced by the following:

“5. Point (46)(b) of Article 1 of this Regulation, as regards the new requirement for own funds for G-SIIs laid down in Article 92(1a) of Regulation (EU) No 575/2013, shall apply from 1 January 2023.”;

(3) paragraph 7 is replaced by the following:

“7. Point (18) of Article 1 of this Regulation, as regards point (b) of Article 36(1) of Regulation (EU) No 575/2013, containing the provision on the exemption from deductions of prudently valued software assets, shall apply from the date of entry into force of the regulatory technical standards referred to in Article 36(4) of Regulation (EU) No 575/2013.”.

### Article 3

#### Entry into force and application

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from ... [date of entry into force of this amending Regulation] .

Notwithstanding the second paragraph of this Article, point (4) of Article 1 shall apply from 28 June 2021.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*

*For the Council*

*The President*

*The President*

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