Differentiated implementation:

national options and discretions in the EU banking regulation

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Abstract: This paper analyzes differentiated implementation of EU banking legislation that contains over 150 national options and discretions (NODs). We compile a new dataset from data provided by the European Banking Authority and test several hypotheses on expected patterns of differentiation. We find a significant difference between NOD choices of the eleven post-communist member states and the remaining EU members. The evidence also suggests that the difference is likely to be motivated by the desire of national authorities in the eleven states to protect capital and liquidity in the local subsidiaries of foreign-owned banks that dominate their banking sectors. Finally, we outline some consequences of our findings for the recent ECB initiative to reduce the differentiated implementation of banking legislation and discuss agenda for follow-up research. Theoretically, we draw on the discussion about instrumental vs constitutional differentiation and define our case of differentiation as instrumental. In regard to the question whether differentiation stems from capacity problems or sovereignty concerns, we conclude in favor of the latter.

Keywords: differentiation, EU, banks, regulation, CRR/CRD IV

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1. Introduction

The banking union increases the pressure of one-size-fits-all regulatory framework imposed on varied structures of banks and banking sectors across the participating countries. While the laws of the European Union (EU) strive to harmonize banking regulations, they also try to accommodate some national specifics through National Options and Discretions (NODs). The current versions of the Capital Requirements Regulation (CRR) and Capital Requirements Directive (CRD IV) contain about 150 NODs. They present national authorities with choices that need to be made separately in each member state, when EU rules are transposed to national legislation and enforced by national supervisory authorities. NODs thus provide opportunities for de iure differentiation, which is compliant with EU law, but still distorts the level playing field across the single banking market (ECB 2016a)..

This paper analyzes the patterns of differentiation observable in NODs choices made by EU member states. It asks whether and how national authorities use NODs and whether their choices map on any of the clustering posited by the academic literature. Answers to these questions are important for the evolution of the banking union, which needs to cope with the two contradictory pressures that give a rise to NODs. The first is the need to come to terms with legitimate diversity of the national banking systems, while the second it to avoid "a layer of complexity and costs which is particularly burdensome for firms operating across borders … and can negatively affect the SSM's ability to supervise banks efficiently and from a truly single perspective" (ECB 2016a: 3).

We employ a novel database derived from data collected by the European Banking Authority in 2014 that provide information on 68 CRR and CRD related NODs. Our findings indicate that member states take advantage of opportunities for de iure differentiation through NODs and, moreover, there seems to be a systematic difference between the new, post-communist member states (emerging markets) and the rest of the EU (advanced economies). These tentative results point towards potential tensions that may arise in the implementation of banking union and especially its single rulebook and single supervisory mechanisms.

The paper is structured as follows. In the next two sections, we introduce the reasons for embedding the NODs in the EU banking legislation as well as three hypotheses suggesting potential patterns of differentiation in transposition among several subsets of EU member states. The next section describes our dataset and the findings of our analysis. The conclusion outlines some consequences of our findings for practical and theoretical debates on the differentiated integration, while also outlining the follow-up research on our exploratory analysis.

2. Differentiated implementation via national options and discretions

National options and discretions provide member states with formal opportunities for differentiated implementation of the EU banking regulation. Legally, the national option is defined as "a situation in which competent authorities or member states are given a choice on how to comply with a given provision selecting from a range of alternatives set forth in Community legislation", while the discretion is defined as "a situation in which competent authorities or Member States are given a choice whether to apply or not to apply a given provision in EU Law" (Margerit 2016: 1). The NODs embedded in the EU banking legislation thus can be decided either by national regulators (national parliaments transposing EU directives to national laws or ministries of finance that stipulate implementing rules) or by competent authorities (national supervisors such as central banks or financial market authorities). Their choices of NODs thus represent differentiation in implementation. However, it is a kind of de iure differentiation, which needs to be distinguished from the de facto differentiated implementation as understood by the EU compliance literature (see Falkner et al. 2005; Treib 2014).

NODs arose in response to the consistency-flexibility trade-off characteristic for the EU harmonization process. On the one hand, the single banking market needs a single regulatory framework, which is seamlessly integrated across member jurisdictions. At the same time, there also needs to be some flexibility to accommodate legitimate differences among national banking sectors across the EU and to reduce the adoption costs of new rules. The Commission's approach to this trade-off evolved with experience since mid-1980s origins of the single market and is set for further adaptation in forthcoming years as the EU consolidates the single rulebook pillar of the banking union.

The 1985 White Paper on Completing the Internal Market introduced the three elementary principles: (i) the mutual recognition of the national regulatory and supervisory arrangements; (ii) the principle of minimum harmonization setting a common framework at EU level; and (iii) home country control relating to the headquarters of the respective cross-border firms. These principles were implemented only with partial success in banking directives adopted during the 1980s and 1990s.

The minimum harmonization and mutual recognition proved insufficient for seamless regulatory integration, because important provisions were often adapted to national preferences during the transposition of directives and gold-plated with additional requirements (Grossman and Leblond 2013, Posner and Veron 2010, Kudrna 2011). The result was sustained regulatory fragmentation, as common rules were transposed and implemented differently in each member state. Hence, cross-border banks had to adapt their internal compliance systems to specific national circumstances while the single banking market lacked the single regulatory framework.

The Commission was aware of the regulatory fragmentation and initiated the Financial Services Action Plan (Commission 1999) as it prepared for the introduction of the single currency in 1999. The initiative resulted in governance reforms culminating in the introduction of the Lamfalussy procedure (Lamfalussy 2000) into financial market regulation by 2004. The governance changes strengthened the consultation process and the role of supervisory agencies, who are responsible for consistent enforcement of EU legislation in all member states (Kudrna 2016). The Lamfalussy procedure also helped to identify policy conflicts over the financial legislation and put them on agenda during their negotiation phase (Kudrna 2011). Consequently, it enabled the Commission to adapt the approach to the banking legislation, by shifting from the minimum harmonization to the maximum harmonization, which handles the consistency-flexibility trade-off differently. The former provided necessary flexibility to EU legislation by relying on vague, principle-based provisions that papered over policy conflicts (Kudrna 2011), while the latter relied on a list of prescriptively formulated

NODs. Consequently, the Capital Requirements Directive III (CRD III) adopted in 2006 contained more than 100 NODs (Quaglia 2010).[2]

The post-2007 global financial crisis provided the Commission with another opportunity to enhance the maximum harmonization. For the first time, the Council and EP agreed to stipulate at least part of the banking legislation in a regulation. Hence, the CRD IV was complemented by the CRR, which is directly applicable without further national transposition. This limits the scope for inconsistencies across member states that may arise during the transposition of a directive and thus is likely to improve the consistency of banking regulation across the single market. At the same time, the flexibility necessary to accommodate differences among national banking sector was provided by 150 NODs embedded in the CRR/CRD IV package.

The shift to maximum harmonization during the 2000s improved the consistency of the EU banking legislation, but at the cost of the increasing number of NODs. This problem came to the forefront again after the EU decided to create the banking union. Inter alia, the banking union consists of the single rulebook (operated by the European Banking Authority - EBA) and the single supervisory mechanism (SSM - operated by the Single Supervisory Board at the European Central Bank). Both the single rulebook and SSM are expected to "intensify the integration of banking supervision" (ECB 2016a:3) and reduce the extent of differentiated implementation via NODs. To meet this mandate, the EBA had collected data on implementation of NODs in all member states in 2014 (EBA 2014), while the ECB had drafted a Regulation reducing the use of NODs for banks under its direct supervision (ECB 2016b). Since the ECB became the equivalent of the

[2] The CRD III implemented the Basel II capital accord, which was adopted by the global standard setting body - Basel Committee on Banking Supervision - in 2004 (see Quaglia 2014).

'national competent authority' for the 130 largest banks under its direct supervision, it can decide directly 35 NODs contained in the CRD IV package (see ECB 2016a).[3] However, the ECB also expressed its preferences on further 82 NODs in a Guide, which serves as a non-binding soft-law instrument designed to guide NOD choices of member states and competent authorities.

Both the EBA and ECB are set to increase the harmonization of banking regulation through elimination of NODs on the basis of technical mandates. However, their approach is at odds with the argument that differentiation - including differentiation in de iure implementation - may be the solution to the problems stemming from varieties of national political and economic systems. Moreover, the NODs elimination also ignores economic and political reasons that lead towards embedding dozens of NODs in the regulatory framework.

First, NODs provide an opportunity to reduce the implementation costs, especially in member states with national regulatory frameworks most different from the global and EU compromises.[4] Since national banking systems evolved in relative isolation, they are not easily compatible with any one-size-fits-all framework, thus NODs - temporary or permanent - can reduce implementation costs or at least spread them over time.

Second, NODs also serve overtly political purposes. They can help to avoid political stalemate in the negotiations of contested issues by facilitating compromise package

[3] This includes also NODs in Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 on the Liquidity Coverage Ratio.
[4] Much of the banking regulatory framework is set on the global level by the Basel Committee on Banking Supervision (see Tarullo 2008) and subsequently transposed into the EU law by the Commission (see Quaglia 2014).

deals. They allow to insert various exemptions and 'grandfathering' clauses that recognize existing banking structures that are not fully compatible with new rules and set broader ranges for important regulatory parameters (all while imposing explicit limits on the extent of acceptable choices as expected under the maximum harmonization approach). Hence, NODs provide additional bargaining chips that allow all EU stakeholders to claim some success in negotiations that is instrumental for the successful forging of EU compromises. Moreover, the NODs may also increase the perceived legitimacy of the EU regulations, by avoiding the strict one-size-fits-all approach that is a source of Eurosceptic resentments. The NODs can be regarded as a tool with which the EU legislator demonstrates respect to national legal traditions and regulatory practices (Hartman 2013).

An important aspect of NODs is that even if they are requested by a single member state, they are always available to all of them, if they get adopted in the legislation. This implies that member states make choices about NODs in two rounds. During the negotiations phase they put forward their preferred NODs that they would like to get included in the final legal text. In the implementation phase after the legislation is adopted, the member state authorities choose again from the full list of available NODs, which includes those put forward by all the other member states. Hence, in case of CRR/CRD legislation states had to make choices on all 150 NODs available, even if they initiated only a few of them.

The choices of NODs determine the extent of differentiation in de iure implementation, which in turn provides important insights for substantive, political and scholarly debates about EU policies. The first question is whether the member states and their authorities actually differentiate by their choices of NODs. The second question is whether there is any regularity in their choices of NODs that could indicate a variety of political and economic cleavages. Consequently, if there are systematic patterns in this kind of differentiation, the third question is which NODs drive them - it may be mere administrative technicalities, but also NODs with direct impact on the financial stability of banks.

Substantively, the differentiation in implementation distorts the single regulatory framework by creating national specifics. This presents a challenge for cross-border banks that operate in more than one EU economy, but ultimately may also impact the costs, efficiency and stability of banks (Barth et al. 2006, 2012; Argimon and Ruiz-Valenzuela 2010). Despite striving for maximum harmonization, the accumulation of NODs creates differences, which lead to higher complexity, less transparency and, consequently, to higher compliance costs for banks. At the same time, not all NODs are equally important. Most of them are minor technical parameters, but several of them can directly influence financial stability of banks.

The ECB (2016a: 7) singles out two NODs as having 'the most significant and quantifiable immediate impact' on the financial stability. The first are transitional arrangements for the definition of own funds, which allow EU banks to converge at various speeds towards a common definition of capital. In particular, the extension of the phase-in for the deduction of Deferred Tax Assets (DTAs) from 5 to 10 years distorts temporarily bank capital ratios, especially in Greece, Ireland, Portugal, Austria and to lesser extent also in Germany, Belgium, Spain, Italy and Netherlands.[5] The second important NOD is the possibility not to deduct holdings in insurance subsidiaries for bank-led financial conglomerates. This exception awarded by national authorities on a case-by-case basis enhances the capital ratios of systemically important banks by 9.6 percent, i.e. by 1 percentage point (ECB 2016a: 10).

The political significance of the differentiation in de iure implementation is related to the management of policy conflicts in the EU. Introducing additional NODs into the secondary legislation makes its adoption easier, but also shifts policy conflicts into the implementation phase. NODs ease compromises in the Council and European Parliament, but complicate consistent enforcement, which is a responsibility of the EBA, ECB and national competent authorities. Moreover, the use of NODs, and especially those with significant impact of financial stability ratios, can exacerbate various cleavages among EU and Euro Area member states. For example, the extended period for deduction of the Deferred Tax Assets - the NOD noted above - benefits primarily banks in the countries most impacted by the Euro crisis. Therefore, faster compliance would be likely to exacerbate the tensions among the 'North' and 'South' of the Euro Area.

Finally, the scholarly significance of differentiated implementation stems from its economic and political relevance. It is an additional kind of differentiation that falls in between the studies of the differentiation of primary and secondary law on one hand, and compliance literature on the other. Moreover, the analysis of choices over NODs can

[5] On the global level, the Basel Committee for Banking Supervision agreed on the 5-year phase-in, hence this NOD is one of the reasons for EU's non-compliance with the Basel III capital agreement reached in 2009.

reveal some underlying policy preferences on banking regulation and broader political economy cleavages relevant for the single market in financial services. Last, but not least, the empirical research on NODs adds to our understanding of differentiation under the maximum harmonization approach to banking legislation.

3. Hypothesizing the patterns of differentiated implementation

This paper aims to provide the first exploratory analysis of differentiated implementation of the banking legislation in the EU. For this purpose, we formulate three hypotheses to be tested empirically. We aim to test these hypotheses against the null hypothesis stipulating that the variation in member states NOD choices is entirely random. Therefore, the conceptual proposition to be evaluated is that each member state exercises not only the NODs that it had put forward during negotiations, but – once all NODs is embedded in the secondary legislation – chooses from the full menu of NODs in order to maximize the fit with some underlying political economy structures. The following hypotheses propose three such underlying cleavages: membership in the Euro Area, the institutional structure of the banking sectors posited by the Varieties of Capitalism theories, and the distinction between emerging markets of the post-communist member states and advance markets of member states that did not experience economic transformation in the last three decades.

The first hypothesis posits a systematic difference between 19 Euro Area (EA) members and 9 non-members. There is a lasting tension between the single banking market of all EU members and the single currency that does not include all EU countries. Policy initiatives since the Financial Services Action Plan in 1999 were motivated by development of the single market for the single currency, thus creating the expectation of faster harmonization and less differentiated implementation within the EA. The differentiation between the EA and non-EA countries has culminated in the banking union, which is open to all EU member states, but compulsory only for the EA members. On this basis, it is reasonable to hypothesize that patterns of NODs will be increasingly more similar within the EA and therefore differ from the NOD choices of non-EA countries.

The Varieties of Capitalism literature is the source of the second hypothesis. This line of research argues that performance and innovativeness of economies is shaped by institutional complementarities that form three broad groups within the EU: liberal, coordinated and dependent market economies (Soskice and Hall 2001, Nölke and Vliegenthart 2009). The banking sector plays a different role in each of the three types, therefore states may prefer differentiated implementation of EU legislation in order to enhance and preserve their institutional comparative advantages. In coordinated market economies (CME) like Germany or Austria, banks collaborate with firms, play an insider role in their corporate governance and provide longer-term financing. In liberal market economies (LME) like UK or Ireland, banks compete with capital markets as suppliers of capital, play an outsider role in corporate governance and provide shorter-term financing. In dependent market economies (DME), banks as well as large firms are foreign-owned, play only an outside role in corporate governance and also tend to provide only relatively short-term financing. Regulators and supervisors may opt for those NODs protecting these types of banking specialization and avoid those that could disrupt them.

The third strand of literature that suggests potential for differentiated implementation stems from development economics. Regulatory frameworks for various industries are usually formulated for the most advanced group of countries such as G7, but often get applied worldwide. However, the empirical experience with their implementation in developing countries is mixed at best (Barth et al. 2004), which invites the debate whether international standards ought to be adapted to national circumstances (Goldstein 1997, Mishkin 2006). Since the Eastern enlargement, the single market contains not only advanced market economies of the 'old' member states, but also economies classified as emerging markets by financial information provides (MSCI 2016) and international organizations (EBRD 2016). The differences that distinguish emerging and advanced economies in terms of capacity to regulate financial markets typically include: (i) the limited resources that make it difficult to attract and retain skilled financial professionals in the civil service, (ii) the volatile political environment with limited accountability and prone to higher levels of regulatory capture and corruption, and (iii) volatile legal environment characterized by frequent changes and incomplete regulatory frameworks (Laffont 2005, Estache and Wren-Lewis 2009). Although, the EU membership and Europeanization of the post-communist countries limits these problems, the literature on enlargement (Sedelmayer 2014) and compliance (Treib 2014) demonstrates that they are not fully eliminated. Consequently, we can hypothesize that these different circumstances can impact regulatory choices (Kudrna and Medzihorsky 2012), including the choices of NODs.

The Table 1 provides a brief summary of hypotheses for empirical testing. The information on assignment of individual member states into each subset is provided in the Appendix.

Table 1: The summary of hypotheses

	Hypothesis
H0	No systematic difference across any subset of EU member states.
H1	There is a systematic difference between NOD choices of EA and non-EA member states.
H2	There is a systematic difference among NOD choices of member states classified as CME, LME or DME.
H3	There is a systematic difference between NOD choices of 17 advanced market economies and 11 post-communist emerging markets.

4. Data and findings

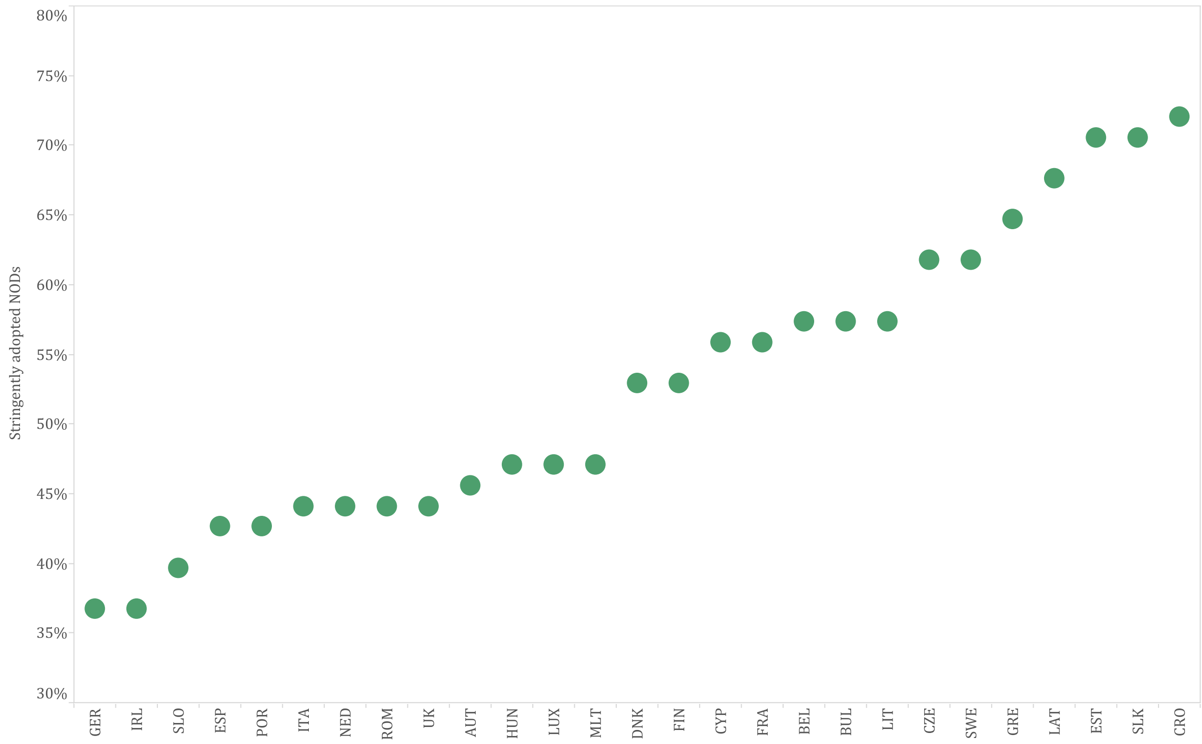
The ECB has identified 150 NODs in the current CRR/CRD and related implementing legislation (ECB 2016a). The EBA collected data on 68 of them, for 27 member states (Poland was missing due to delayed transposition) as applicable by the end of 2013 (EBA 2014). For each member states, the EBA' data reflects whether the discretion has been exercised or not (YES/NO answer). These data conform to the definition of differentiation proposed by Duttle et al (2016: 5) as they imply "the territorially unequal formal validity of EU legal rules" not because of unintended differences in compliance, but because of the conscious choices of national legislators, regulators and supervisors.

The NODs in the EBA dataset can be further categorized along several dimensions. Twenty of the NODs are based on the CRD, while 48 derive from CRR. The majority of NODs (49) are to be decided by the supervisors (competent national authorities or ECB), while 17 are decided by regulators (parliaments and ministries) and 2 can be decided be either of them. Moreover, some of the NODs are general in the sense of applying to all banks headquartered in a given member state, while others are awarded on a case-by-case basis to individual banks either by the national authority (or by the ECB in case of the 130 directly supervised banks under SSM). Twenty NODs in the EBA database are temporary, while the rest is set permanently without any expiration date.[6] Most of the temporary NODs, include a step-by-step schedule that induces gradual convergence over time, generally by 2019. However, member state had to take decisions and report them to EBA by the end of 2013, which all states, but Poland complied with.

In order to facilitate empirical analysis, we have coded EBA database into a dataset of binaries capturing the presence or absence of each NOD in the member state's regulatory framework (zero/one variable). We assign a value of 1 when the answer reflects a more stringent regulatory treatment than the benchmark provided by the CRR/CRD or when it avoids granting some form of an exception that is permitted by the CRR/CRD (see Appendix). We group the responses provided by the member states into aggregate index, defined as a sum of all positive answers and normalized as a percentage of the 68 potential answers. The resulting index provides straightforward interpretation: the higher the index, the more NODs are being implemented stringently in the given member state. The Chart 1 shows the index for the 27 countries and reveals that there is considerable variation among their NOD choices. In other words, the data yield support to the claim that NODs allow for differentiated implementation even within the scope of maximum harmonization of banking directives.

[6] Some of the NODs in the CRR/CRD are based on options allowed for in Basel III package. However, the Basel Committee is currently reviewing all these options and some are likely to be removed (BIS 2014). Consequently, the EU is likely to follow and remove such options from the CRR/CRD to ensure international compliance.

Chart 1: Differentiated implementation: stringency index



To compare the stringency indices of member states subsets, we calculate the average (mean) stringency index for each one of them (see Appendix). The mean index expresses what percentage of all 68 NODs was adopted stringently by member states in the given subset (see charts in the Appendix).

Since this is an exploratory paper, we limit the testing to a simple t-test that allows us to establish whether we can reject the null hypothesis in favor of any of the alternative ones. Table 2 reports results for the four hypotheses outlined in the previous section (see Table 1). The results suggest that only the difference in average index of the EU11 ('new' post-communist member states) and EU17 ('old' member states) is statistically significant. Moreover, the differences between the Dependent Market Economies and both LME and CME averages, respectively, also come close to being significant. This provides further support to the H3, stipulating that EU11 choose NODs differently than EU17.

Table 2: Empirical results

	T-stat	DF	P-value	Mean difference	Lower CI	Upper CI
H1: EA	-0.788	14	0.443	-0.033	-0.124	0.057
H2: VoC						
D/Lme	2.018	14	0.063	0.101	0.006	0.208
D/Cme	2.041	16	0.058	0.091	-0.004	0.186
L/Cme	-0.237	10	0.816	-0.010	-0.101	0.082
H3: EM	2.254	14	0.041	0.094	0.004	0.185

Given the design of the index, this result can be interpreted as the EU11 authorities choosing to implement NODs more stringently, thus creating marginally more stringent regulatory regime for banks operating within their jurisdiction - with the caveat that the index documents only de iure differentiation, not the actual stringency of the enforcement (aka compliance).

The index gives equal weight to each NOD and thus does not discriminate between those that are administrative technicalities and those NODs that are substantively important as they may impact financial stability (see ECB 2016a). Hence, for assessment of the potential policy relevance of the EU11-EU17 difference, we need to specify NODs that explain most of the difference. Table 3 lists 11 NODs with the largest differences between the EU11 and EU17 (the cutoff point is that more than 25% of either group differs in their choice on given NOD). These 11 NODs (16% of all NODs in our dataset) explain 40 percent of the difference between the average stringency index of the E11 and EU17.

Table 3: NODs explaining the EU11-EU17 difference

#	Code	Non-technical summary of the NOD	EU11 [%MS]	E17 [%MS]
1	P56	Not providing transitional exception allowing banks to avoid subtracting unrealized losses (measured at fair value) from their capital makes EU11 regime more stringent.	90	35
2	P64	Faster recognition of minority interests and qualifying bank capital than required by CRR makes EU11 more stringent.	70	18
3	P66	Faster phasing out of grandfathered items in bank capital than required by CRR makes EU11 more stringent.	50	11
4	P15	Requirement to apply a systemic risk buffer to all exposures makes EU11 more stringent.	100	65
5	P41	Not granting exemptions to large exposures to regional or central credit institutions with which the bank is associated in a network makes EU11 more stringent.	80	41
6	P63	Faster phasing out of instruments and items that do not qualify as minority interests from bank capital than required by CRR makes EU11 more stringent.	60	24
7	P16	Recognition of a systemic risk buffer rate imposed by other member state and its application to domestic banks exposed to that member state makes EU11 regime more stringent.	100	65
8	P59	Faster removal of unrealized gains from bank capital than required by CRD makes EU11 more stringent.	60	29
9	P5	EU11 regimes are less stringent as they reduce the minimum amount of initial capital for investment firms not authorized to hold client money or securities.	30	59
10	P45	Not granting exemptions to central government exposures in national currency makes EU11 more stringent.	70	41
11	P62	Use of higher deductions of deferred tax assets from bank capital than required by the CRR make the EU11 regimes more stringent.	80	53

Note: See Appendix for full definitions.

On the level of individual NODs, the differentiated implementation that distinguishes EU11 and EU17 stems from four types of differences. The first type distinguishes the

EU11 regulatory regimes by introducing more stringent treatment faster than envisaged by the CRR/CRD legislation (see P64, P66, P63, P56, P59 and P62 in Table 3). All six of these NODs indicate that EU11 member states force their banks to phase-out financial instruments - that used to be acceptable as bank capital before the crisis, but are being phased out on the basis of the Basel III agreement - faster, then envisaged by the minimum benchmarks. This also includes faster phasing-out the deferred tax assets (P62), which the ECB (2016a: 7) identified as the NOD with the single largest impact on banks' capital calculations (ECB 2016a: 6). Although, deferred tax assets were more important in Southern than Eastern member states, this example demonstrates the NOD-based differentiation includes economically significant aspects of the regulatory regime.

Second, the EU11 are also more stringent in their imposition of additional capital buffers on their banks (P15 and P16). While among EU17 only 65% of state imposes these buffers, all EU11 states do so. This aspect of differentiated implementation strongly suggests a cleavage between host and home regulators. Since EU11 banking sectors are dominated by foreign banks, national regulators seem to be keen to preserve capital in bank’s local subsidiaries and protect them from potential contagion originating from home-countries or other EU member states.

The same host-home logic is likely to motivate the third type of difference, namely the EU11 tendency to accept fewer exemptions (P41 and P45 in Table 3). These two NODs, when granted, allow banks to hold less liquidity in the host countries and use it in other parts of the banking group. Finally, the fourth type of differentiation (P5 in Table 3) makes the EU11 regime less stringent, since this NOD reduces the required initial capital of investment firms. This is not particularly surprising as firms in smaller EU11 economies also tend to be smaller and therefore need less capital.

Overall, the empirical results strongly suggests that the differentiated implementation that distinguishes the stringency of bank regulation in EU11 and EU17 member states is determined primarily by concerns of the EU11 host-countries to protect capital and liquidity in the local subsidiaries of foreign banking groups. However, establishing any causal relationship requires further research, because there are plausible alternative explanations such as banks in EU11 not having any legacy capital instruments so it is actually easier to phase them out quicker than in EU17. However, this discussion goes beyond the ambition of this paper.

5. Conclusions

This paper contributes to the current literature on differentiation by exploring the patterns of member states' choices over the National Options and Discretions (NODs) contained in the current generation of the EU's Capital Requirements legislation. The conceptual starting point is that NODs embedded in the secondary legislation merely provide an opportunity for differentiation. Only subsequent choices of member state authorities determine whether there is any differentiation in implementation or not. We analyze these choices on the basis of a new dataset, which we have compiled from heretofore unexploited data collected by the European Banking Authority (EBA 2014).

Our exploratory analysis tested three hypotheses expecting systematic differences in the NODs take-up: (i) between Euro Area members and non-members, (ii) among the three types of economies proposed by the Variety of Capitalism literature and (iii) between the advanced economies of the 17 'old' EU members and emerging markets of the 11 'new' post-communist member states. We have found a statistically significant difference only between the new EU11 and old EU17 member states and identified 11 NODs that explain much of the difference between the two subsets. On average the EU11 authorities tend to use NODs to impose more demanding capital requirements, impose them before final deadlines specified in CRR/CRD IV and grant fewer exemptions. The preliminary analysis of this evidence suggests the differences can be explained by the effort of EU11 authorities - which are hosts to EU17-based financial groups - to protect capital and liquidity in foreign-owned subsidiaries dominating their banking sector.

In terms of broader debate on differentiated integration in the EU, our findings suggest that the NODs are indeed utilized for differentiated implementation of the secondary legislation. At the same time, they impose explicit limits on the extent of this differentiation, which is the key achievement of the shift from minimum to maximum harmonization approach pursued by the Commission since early 2000s. Yet, this differentiated implementation is on the collision course with the banking union. The ECB and EBA, as guardians of the single supervisory mechanism and single rulebook respectively, try to reduce the variance in member states' NOD choices. However, efforts to reduce the extent of differentiated implementation are likely to lead to several paradoxes deserving further research.

The first issue is related to the current attempt of the ECB to harmonize NOD choices by imposing its view (ECB 2016a,b). However, since the ECB can impose its choice only on the 35 NODs for which it serves as competent authority (and only for the 130 banking groups that it directly supervises) this will create an additional layer of differentiated implementation. The ECB choice of NODs will apply to 3 (or so) largest banks in each member state, but not to their smaller competitors. Hence, unless member state authorities converge quickly on the ECB view, the paradoxical outcome of ECB's effort to curb differentiated implementation would be even more differentiated implementation.

The second issue is the impact of ECB-imposed harmonization of NODs choices on political legitimacy of CRR and CDR IV. After all, NODs are also political devices used to forge EU compromises that are acceptable on the national level. Eliminating them can destabilize some specific segments of national banking sectors that were meant to be protected by NODs and thus force unexpected structural reforms in some countries. These could in turn increase countervailing political pressures on the ECB and EBA.

The third issue relates to deepening of the home-host cleavages suggested tentatively by our empirical results. The NODs choices can be regarded as a mechanism revealing preferences of national authorities with regard to banking regulation. Hence, the differences between EU11 and EU17, may be indicative of deeper divisions between home and host countries. Such cleavages could hamper collaboration of EU11 countries that are part of the banking union as well as those that are considering joining in through cooperation agreement with the ECB.

Finally, the differentiated implementation within the EU is likely to be affected by changes on the global level. Since some NODs are based on the options included in the

Basel III capital accord, and since the Basel Committees on Banking Supervision is currently reviewing them with the view of reducing their number (BIS 2015), member states may need to abandon some of their NOD choices to ensure EU compliance with evolving global standards. Although the Basel Committee is composed primarily of EU states, the compromises on the global differ from European level due to powerful presence of the US, Japan and other states. Hence, EU representatives may not be able to protect all options that some of the EU states consider vital. Consequently, global changes may trigger structural adaptations in some member states.

While we leave the systematic exploration of the above observations to follow-up research, at this point we may draw some preliminary conclusions: first, whereas our case of differentiation occurs in the realm of "core state powers" (monetary union), it is highly instrumental to serve specific interests of national banking sectors and the national competent authorities supervising them; second, we may interpret the use of NODs by both groups of states - EU 11 and EU 17 - as a sovereignty preserving method: while rich countries aim at protecting the role of national actors (competent authorities and banks) in defining capital requirements, poor countries wish to protect themselves (and their banks) from the uncertainties related to the decision-making of foreign-owned banks on capital movements. Thus, the distinction between poor countries aiming at differentiation because of incapacity to follow EU demands and rich countries pursuing differentiation in the name of national superiority would call for some qualification.

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Appendix

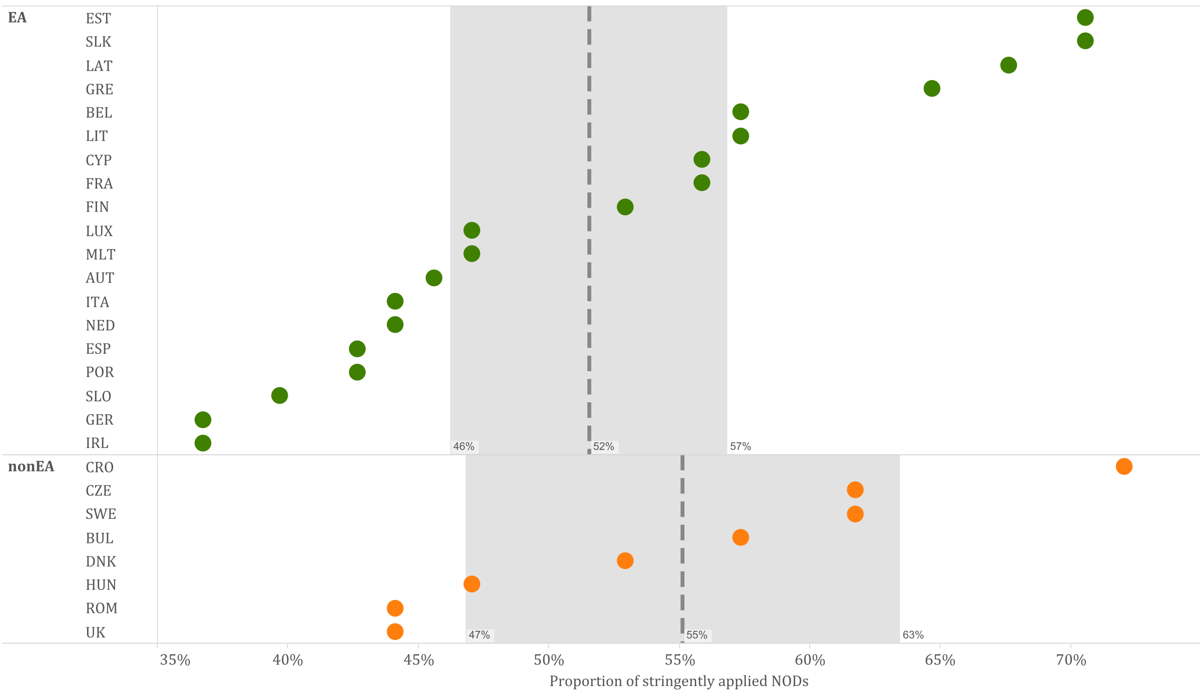
A.1 Country groupings

Country Group	Member states included
Euro area members (EA)	AUT BEL CYP GER EST GRE ESP FIN FRA IRL ITA LIT LUX LAT MLT NED POR SLO SLK
Euro Area non-members (nonEA)	BUL CZE DNK UK CRO HUN ROM SWE (POL)
Liberal Market Economies (LME)	FIN UK IRL LUX NED SWE
Coordinated Market Economies (CME)	AUT BEL CYP GER DNK GRE ESP FRA ITA MLT POR
Dependent Market Economies (DME)	BUL CZE EST CRO HUN LIT LAT ROM SLO SLK (POL)
Advanced markets (West)	AUT BEL CYP GER DNK GRE* ESP FIN FRA UK IRL ITA LUX MLT NED POR SWE
Emerging markets (East)	BUL CZE EST CRO HUN LIT LAT ROM SLO SLK (POL)

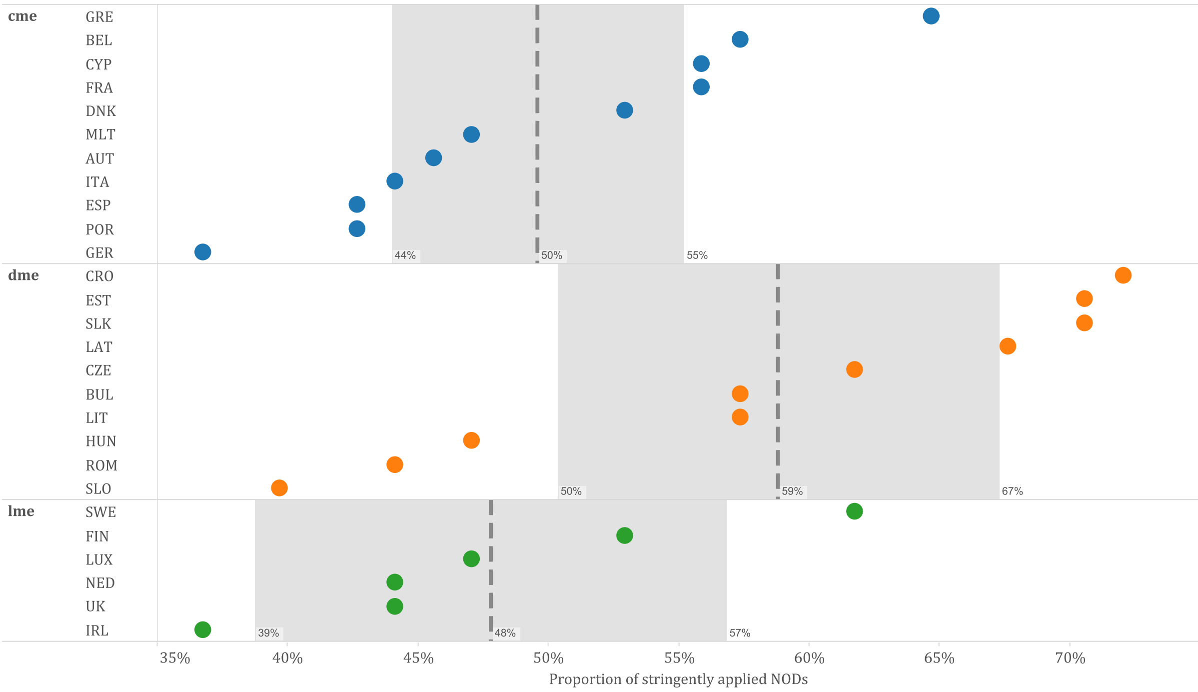
Note: Data for Poland were not available. * Some financial data providers have reclassified Greece as an emerging market following the Troika rescue packages.

A.2 Comparative charts

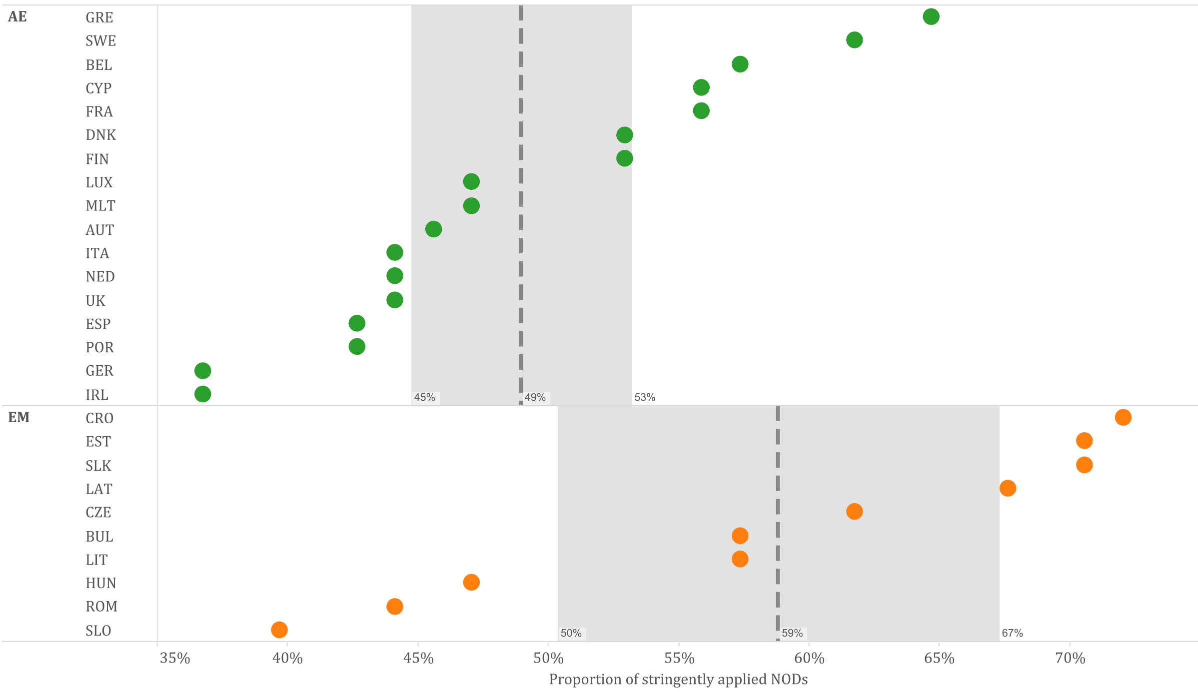
H1: Euro Area membership: no significant difference



H2: Variety of banking capitalism: no significant difference



H3: Advanced vs. emerging markets in EU: significant difference



A.3 Full definitions of all NODs

NOD	Definition	Coding: General	Coding: specific
P1	Exception to the prohibition against persons or undertakings other than credit institutions from taking deposits or other repayable funds from the public :: The prohibition against persons or undertakings other than credit institutions from carrying out the business of taking deposits or other repayable funds from the public shall not apply to a Member State, a Member State's regional or local authorities, a public international bodies of which one or more Member States are members, or to cases expressly covered by national or union law, provided that those activities are subject to regulations and controls intended to protect depositors and investors.	1 if no exception granted	1 if 0 or NA in part 1
P2	Initial capital :: Member States may decide that credit institutions which do not fulfil the requirements to hold separate own funds and which were in existence on 15 December 1979 may continue to carry out their business. They may exempt such credit institutions from complying with the requirements contained in the first subparagraph of Article 13(1) of Directive 2013/36/EU.	1 if no exception granted	1 if 0 or NA in part 1
P3	Initial capital :: Member States may grant authorisation to particular categories of credit institutions the initial capital of which is less that EUR 5 million, provided that the initial capital is not less than EUR 1 million and the Member concerned notifies the Commission and EBA of their reasons for exercising that option.	1 if no exception granted	1 if 0 or NA in part 1
P4	Exemptions for credit institutions permanently affiliated to a central body :: Competent authorities may exempt with regard to credit institutions permanently affiliated to a central body from the requirements set out in Articles 10, 12 and 13(1) of Directive 2013/36/EU.	1 if no exception granted	1 if 0 or NA in part 1
P5	Initial capital of particular types of investment firms :: Member States may reduce the minimum amount of initial capital from EUR 125 000 to EUR 50 000 where a firm is not authorised to hold client money or securities, to deal for its own account, or to underwrite issues on a firm commitment basis.	1 if no exception granted	1 if 0 or NA in part 1
P6	Investment firms' initial capital grandfathering clause :: Member States may continue authorising investment firm and firms covered by Article 30 of Directive 2013/36/EU which were in existence on or before 31 December 1995, the own funds of which are less than the initial capital levels specified for them in Article 28(2), Article 29(1) or (3) or Article 30 of that Directive.	1 if no exception granted	1 if 0 or NA in part 1
P7	Reporting requirements to host competent authorities :: The competent authorities of host Member States may, for information, statistical or supervisory purposes, require that all credit institutions having branches within their territories shall report to them periodically on their activities in those host Member States, in particular to assess whether a branch is significant in accordance with Article 51(1) of Directive 2013/36/EU.	1 if additional requirement imposed	1 if 1 in part 1
P8	Variable elements of remuneration :: Member States may set a maximum percentage for the variable component lower than 100% of the fixed component of the total remuneration for each individual.	1 if additional requirement imposed	1 if 1 in part 1

P9	Variable elements of remuneration :: Member States may allow shareholders or owners or members of institutions to approve a higher maximum level of the ratio between the fixed and the variable components of remuneration provided the overall level of the variable component shall not exceed 200% of the fixed component of the total remuneration for each individual. Member State may set a lower maximum percentage.	1 if additional requirement imposed	1 if Part 10, row 8 set at less than 200%
P10	Variable elements of remuneration :: Member States may allow institutions to apply the discount rate referred to in the second subparagraph of Article 94(1)(g)(iii) to a maximum of 25% of total variable remuneration provided it is paid in instruments that are deferred for a period of not less than 5 years. Member States may set a lower maximum percentage.	1 if no discounting allowed	1 if Part 10, row 9 set "NO"
P11	Variable elements of remuneration :: Member States or their competent authorities may place restrictions on the types and designs of instruments referred to in Article 94(1)(l) or prohibit certain instruments as appropriate.	1 if additional requirement imposed	1 if 1 in part 1
P12	Application of SREP to institutions with similar risk profiles :: Where the competent authorities determine under Article 97 that institutions with similar risk profiles such as similar business models or geographical location of exposures, are or might be exposed to similar risks or pose similar risks to the financial system, they may apply the supervisory review and evaluation process referred to in Article 97 to those institutions in a similar or identical manner.	1 if applied identically	1 if 1 in part 1
P13	Exemption from the requirement to maintain a capital conservation buffer for small and medium-sized investment firms :: By way of derogation from paragraph 1 of Article 129, a Member State may exempt small and medium-sized investment firms from the requirements set out in that paragraph if such an exemption does not threaten the stability of the financial system of that Member State.	1 if no exception granted	1 if 0 or NA in part 1
P14	Exemption from the requirement to maintain a countercyclical capital buffer for small and medium-sized investment firms :: By way of derogation from paragraph 1 of Article 130, a Member State may exempt small and medium-sized investment firms from the requirements set out in that paragraph if such an exemption does not threaten the stability of the financial system of that Member State.	1 if no exception granted	1 if 0 or NA in part 1
P15	Requirement to maintain a systemic risk buffer :: Member States may apply a systemic risk buffer to all exposures.	1 if additional requirement imposed	1 if 1 in part 1
P16	Recognition of a systemic risk buffer rate :: Other Member States may recognise the systemic risk buffer rate set according to Article 133 and may apply that buffer rate to domestically authorised institutions for the exposures located in the Member State setting that buffer rate.	1 if additional requirement imposed	1 if 1 in part 1
P17	Transitional provisions on reporting requirements to host competent authorities :: The competent authorities of host Member States may, for statistical purposes, require that all credit institutions having branches within their territories shall report to them periodically on their activities in those host Member States.	1 if additional requirement imposed	1 if 1 in part 1
P18	Transitional provisions on reporting requirements to host competent authorities :: Host Member States may require that branches of credit institutions from other Member States provide the same information as they require from national credit institutions for that purpose.	1 if additional requirement imposed	1 if 1 in part 1

P19	Transitional provisions for capital buffers :: Member States may impose a shorter transitional period for capital buffers than that specified in paragraphs 1 to 4 of Article 160. Such a shorter transitional period may be recognised by other Member States.	1 if additional requirement imposed	1 if 1 in part 1
P20	Treatment of indirect holdings in real estate :: Member States or their competent authorities may allow shares constituting an equivalent indirect holding of immovable property to be treated as a direct holding of immovable property provided that such indirect holding is specifically regulated in the national law of the Member State and, when pledged as collateral, provides equivalent protection to creditors.	1 if no exception granted	1 if 0 or NA in part 1
P21	Application of requirements on an individual basis :: Pending the report from the Commission in accordance with Article 508(3), competent authorities may exempt investment firms from compliance with the obligations laid down in Part Six (liquidity) taking into account the nature, scale and complexity of the investment firms' activities.	1 if no exception granted	1 if 0 or NA in part 1
P22	Methods for prudential consolidation :: In the case of participations or capital ties other than those referred to in paragraphs 1 and 4 of Article 18, the competent authorities shall determine whether and how consolidation is to be carried out. In particular, they may permit or require use of the equity method. That method shall not, however, constitute inclusion of the undertakings concerned in supervision on a consolidated basis.	1 if no exception granted	1 if 0 or NA in part 1
P24	Methods for prudential consolidation :: Competent authorities shall determine whether and how consolidation is to be carried out in the following cases: (a) where, in the opinion of the competent authorities, an institution exercises a significant influence over one or more institutions or financial institutions, but without holding a participation or other capital ties in these institutions; and	1 if additional requirement imposed	1 if 1 in part 1
P25	Methods for prudential consolidation :: Competent authorities shall determine whether and how consolidation is to be carried out in the following cases: (b) where two or more institutions or financial institutions are placed under single management other than pursuant to a contract or clauses of their memoranda or articles of association. In particular, the competent authorities may permit, or require use of, the method provided for in Article 12 of Directive 83/349/EEC.	1 if additional requirement imposed	1 if 1 in part 1
P28	Risk weighting and prohibition of qualifying holdings outside the financial sector :: Competent authorities shall apply the requirements laid down in point (a) or (b) to qualifying holdings of institutions referred to in paragraphs 1 and 2: (a) for the purpose of calculating the capital requirement in accordance with Part Three of this Regulation, institutions shall apply a risk weight of 1250% to the greater of the following: (i) the amount of qualifying holdings referred to in paragraph 1 in excess of 15% of eligible capital; (ii) the total amount of qualifying holdings referred to in paragraph 2 that exceed 60% of the eligible capital of the institution; (b) the competent authorities shall prohibit institutions from having qualifying holdings referred to in paragraphs 1 and 2 the amount of which exceeds the percentages of eligible capital laid down in those paragraphs. Competent authorities shall publish their choice of (a) or (b).	1 if no exception granted	If 1 in row 33 then 0, if ! In row 34 then 1, because Competent Authority forbids the use of these holdings as eligible capital

P29	Requirements for investment firms with limited authorisation to provide investment services :: Competent authorities may set the own fund requirements for investment firms with limited authorisation to provide investment services as the own fund requirements that would be binding on those firms according to the national transposition measures in force on 31 December 2013 for Directive 2006/49/EC and Directive 2006/48/EC.	1 if additional requirement imposed	1 if 1 in part 1
P30	Reporting on own funds requirements and financial information :: Competent authorities may require those credit institutions applying international accounting standards as applicable under Regulation (EC) No 1606/2002 for the reporting of own funds on a consolidated basis pursuant to Article 24(2) of this Regulation to also report financial information as laid down in paragraph 2 of this Article.	1 if additional requirement imposed	1 if 1 in part 1
P31	Risk weights and criteria applied to exposures secured by mortgages on immovable property :: Competent authorities may set a higher risk weight or stricter criteria than those set out in Article 125(2) and Article 126(2), where appropriate, on the basis of financial stability considerations.	1 if additional requirement imposed	1 if Part 11, row 6 is set
P32	Exposures in the form of covered bonds :: The competent authorities may, after consulting EBA, partly waive the application of point (c) of the first subparagraph and allow credit quality step 2 for up to 10 % of the total exposure of the nominal amount of outstanding covered bonds of the issuing institution, provided that significant potential concentration problems in the Member States concerned can be documented due to the application of the credit quality step 1 requirement referred to in that point.	1 if no exception granted	1 if 0 or NA in part 1
P33	Minimum values of exposure weighted average Loss Given Default (LGD) for exposures secured by property :: Based on the data collected under Article 101 and taking into account forward-looking immovable property market developments and any other relevant indicators, the competent authorities shall periodically, and at least annually, assess whether the minimum LGD values in paragraph 4 of this Article are appropriate for exposures secured by residential property or commercial immovable property located in their territory. Competent authorities may, where appropriate on the basis of financial stability considerations, set higher minimum values of exposure weighted average LGD for exposures secured by immovable property in their territory.	1 if additional requirement imposed	1 if Part 12, row 5 is set
P34	Default of an obligor :: Competent authorities may replace the 90 days with 180 days for exposures secured by residential property or SME commercial immovable property in the retail exposure class, as well as exposures to public sector entities.	1 if no exception granted	1 if 0 or NA in part 1
P35	Exposure value :: Competent authorities may require an α higher than 1.4 or permit institutions to use their own estimates in accordance with paragraph 9.	1 if additional requirement imposed	1 if 1 in part 1
P36	Netting between a convertible and an offsetting position in the underlying instrument :: Competent authorities may adopt an approach under which the likelihood of a particular convertible's being converted is taken into account or require an own funds requirement to cover any loss which conversion might entail.	1 if additional requirement imposed	1 if 1 in part 1
P37	Large exposure limits for exposures to institutions :: Competent authorities may set a lower large exposure limit than EUR 150 000 000 for exposures to institutions.	1 if additional requirement imposed	1 if 1 in part 1

P38	Exemptions or partial exemptions to large exposures limits :: Competent authorities may fully or partially exempt covered bonds falling within the terms of Article 129(1), (3) and (6).	1 if no exception granted	1 if 0 or NA in part 1
P39	Exemptions or partial exemptions to large exposures limits :: Competent authorities may fully or partially exempt asset items constituting claims on regional governments or local authorities of Member States.	1 if no exception granted	1 if 0 or NA in part 1
P40	Exemptions or partial exemptions to large exposures limits :: Competent authorities may fully or partially exempt exposures incurred by an institution to its parent undertaking or subsidiaries.	1 if no exception granted	1 if 0 or NA in part 1
P41	Exemptions or partial exemptions to large exposures limits :: Competent authorities may fully or partially exempt exposures to regional or central credit institutions with which the credit institution is associated in a network and which are responsible for cash-clearing operations within the network.	1 if no exception granted	1 if 0 or NA in part 1
P42	Exemptions or partial exemptions to large exposures limits :: Competent authorities may fully or partially exempt exposures to credit institutions incurred by credit institutions, one of which operates on a non-competitive basis and provides or guarantees loans under legislative programmes or its statutes, to promote specified sectors of the economy under some form of government oversight and restrictions on the use of the loans, provided that the respective exposures arise from such loans that are passed on to the beneficiaries via credit institutions or from the guarantees of these loans.	1 if no exception granted	1 if 0 or NA in part 1
P43	Exemptions or partial exemptions to large exposures limits :: Competent authorities may fully or partially exempt exposures to institutions, provided that those exposures do not constitute such institutions' own funds, do not last longer than the following business day and are not denominated in a major trading currency.	1 if no exception granted	1 if 0 or NA in part 1
P44	Exemptions or partial exemptions to large exposures limits :: Competent authorities may fully or partially exempt exposures to central banks in the form of required minimum reserves held at those central banks which are denominated in their national currencies.	1 if no exception granted	1 if 0 or NA in part 1
P45	Exemptions or partial exemptions to large exposures limits :: Competent authorities may fully or partially exempt exposures to central governments in the form of statutory liquidity requirements held in government securities which are denominated and funded in their national currencies provided that, at the discretion of the competent authority, the credit assessment of those central governments assigned by a nominated External Credit Assessment Institution is investment grade.	1 if no exception granted	1 if 0 or NA in part 1
P46	Exemptions or partial exemptions to large exposures limits :: Competent authorities may fully or partially exempt 50% of medium/low risk off-balance sheet documentary credits and of medium/low risk off-balance sheet undrawn credit facilities referred to in Annex I and subject to the competent authorities' agreement, 80% of guarantees other than loan guarantees which have a legal or regulatory basis and are given for their members by mutual guarantee schemes possessing the status of credit institutions.	1 if no exception granted	1 if 0 or NA in part 1
P47	Exemptions or partial exemptions to large exposures limits :: Competent authorities may fully or partially exempt legally required guarantees used when a mortgage loan financed by issuing mortgage bonds is paid to the mortgage borrower before the final registration of the mortgage in the land register, provided that the guarantee is not used as reducing the risk in calculating the	1 if no exception granted	1 if 0 or NA in part 1

	risk-weighted exposure amounts.		
P48	Exemptions or partial exemptions to large exposures limits :: Competent authorities may fully or partially exempt assets items constituting claims on and other exposures to recognised exchanges.	1 if no exception granted	1 if 0 or NA in part 1
P49	Liquidity coverage requirement :: Member States may maintain or introduce national provisions in the area of liquidity requirements before binding minimum standards for liquidity coverage requirements are specified and fully introduced in the Union in accordance with Article 460.	1 if additional requirement imposed	1 if 1 in part 1
P50	Liquidity coverage requirement :: Member states or competent authorities may require domestically authorised institutions, or a subset of those institutions to maintain a higher liquidity coverage requirement up to 100% until the binding minimum standard is fully introduced at a rate of 100% in accordance with Article 460.	1 if additional requirement imposed	1 if 1 in part 1
P51	Stable funding requirement :: Member States may maintain or introduce national provisions in the area of stable funding requirements before binding minimum standards for net stable funding requirements are specified and introduced in the Union in accordance with Article 510.	1 if additional requirement imposed	1 if 1 in part 1
P52	Liquidity reporting requirements :: Competent authorities may continue to collect information through monitoring tools for the purpose of monitoring compliance with existing national liquidity standards, until the full introduction of binding liquidity requirements.	1 if additional requirement imposed	1 if 1 in part 1
P53	Liquidity outflow rate :: The competent authorities may apply an outflow rate up to 5% for trade finance off-balance sheet related products, as referred to in Article 429 and Annex 1.	1 if additional requirement imposed	1 if 1 in part 1
P54	Liquidity outflows on other liabilities :: Competent authorities may, in the absence of a uniform definition, provide general guidance that institutions shall follow in identifying deposits maintained by the depositor in a context of an established operational relationship.	1 if additional requirement imposed	1 if 1 in part 1
P55a	Transitional provision for own funds requirements :: Competent authorities shall determine and publish the level of the Common Equity Tier 1 in the ranges specified in Article 465(1) that institutions shall meet or exceed.	1 if stringent treatment imposed	1 if Part 2, row 5 set above the statutory minimum
P55b	Transitional provision for own funds requirements :: Competent authorities shall determine and publish Tier 1 capital ratios in the ranges specified in Article 465(1) that institutions shall meet or exceed.	1 if stringent treatment imposed	2 if Part 2, row 7 set above the statutory minimum
P56	Transitional treatment of unrealised losses measured at fair value :: By way of derogation from paragraph 1 of Article 467, the competent authorities may, in cases where such treatment was applied before 1 January 2014, allow institutions not to include in any element of own funds unrealised gains or losses on exposures to central governments classified in the "Available for Sale" category of EU-endorsed IAS 39.	1 if no exception granted	1 if 0 or NA in part 1

P57	Transitional treatment of unrealised losses measured at fair value :: Competent authorities shall determine and publish the applicable percentage in the ranges specified in points (a) to (d) of paragraph 2 of Article 467.	1 if stringent treatment imposed	1 if Part 3, rows 6 to 9 set above statutory minimum
P58	Transitional treatment of unrealised gains measured at fair value :: Competent authorities may permit institutions to include in the calculation of their Common Equity Tier 1 capital 100% of their unrealised gains at fair value where under Article 467 institutions are required to include their unrealised losses measured at fair value in the calculation of Common Equity Tier 1 capital.	1 if no exception granted	1 if 0 or NA in part 1
P59	Transitional treatment of unrealised gains measured at fair value :: Competent authorities shall determine and publish the applicable percentage of unrealised gains in the ranges specified in points (a) to (c) of paragraph 2 of Article 468 that is removed from Common Equity Tier 1 capital.	1 if stringent treatment imposed	1 if Part 4, rows 6 to 9 set above statutory minimum
P60	Exemption from deduction of equity holding in insurance companies from CET1 items :: By way of derogation from Article 49(1), during the period from 1 January 2014 to 31 December 2022, competent authorities may permit institutions to not deduct equity holdings in insurance undertakings, reinsurance undertakings and insurance holding companies where the conditions set out in paragraph 1 of Article 471 are met.	1 if no exception granted	1 if 0 or NA in part 1
P61	Introduction of amendments to IAS 19 :: By way of derogation from Article 481 during the period from 1 January 2014 until 31 December 2018, competent authorities may permit institutions that prepare their accounts in conformity with the international accounting standards adopted in accordance with the procedure laid down in Article 6(2) of Regulation (EC) No 1606/2002 to add to their Common Equity Tier 1 capital the applicable amount in accordance with paragraph 2 or 3 of Article 473, as applicable, multiplied by the factor applied in accordance with paragraph 4 of Article 473.	1 if no exception granted	1 if 0 or NA in part 1
P62	Transitional deductions from Common Equity Tier 1, Additional Tier 1 and Tier 2 items :: Competent authorities shall determine and publish an applicable percentage in the ranges specified in paragraphs 1 and 2 of Article 478 for each of the following deductions: (a) the individual deductions required pursuant to points (a) to (h) of Article 36(1), excluding deferred tax assets that rely on future profitability and arise from temporary differences; (b) the aggregate amount of deferred tax assets that rely on future profitability and arise from temporary differences and the items referred to in point (i) of Article 36(1) that is required to be deducted pursuant to Article 48; (c) each deduction required pursuant to points (b) to (d) of Article 56; (d) each deduction required pursuant to points (b) to (d) of Article 66.	1 if stringent treatment imposed	1 if Part 5, rows 9 to 12 set below statutory maximum
P63	Transitional recognition in consolidated Common Equity Tier 1 capital of instruments and items that do not qualify as minority interests :: Competent authorities shall determine and publish the applicable percentage in the ranges specified in paragraph 3 of Article 479.	1 if stringent treatment imposed	1 if Part 6, rows 6 to 9 set at statutory minimum
P64	Transitional recognition of minority interests and qualifying Additional Tier 1 and Tier 2 capital :: Competent authorities shall determine and publish the value of the applicable factor in the ranges specified in paragraph 2 of Article 480.	1 if stringent treatment imposed	1 if Part 7, rows 7 to 10 set at statutory maximum

P65	Additional transitional filters and deductions :: For each filter or deduction referred to in paragraphs 1 and 2 of Article 481, competent authorities shall determine and publish the applicable percentages in the ranges specified in paragraphs 3 and 4 of that Article	1 if stringent treatment imposed	1 if Part 8, rows 9 to 12 set at statutory minimum
P66	Limits for grandfathering of items within Common Equity Tier 1, Additional Tier 1 and Tier 2 items :: Competent authorities shall determine and publish the applicable percentages in the ranges specified in paragraph 5 of Article 486.	1 if stringent treatment imposed	1 if Part 9 set to statutory minimum
P67	Transitional treatment of equity exposures under the IRB approach :: By way of derogation from Chapter 3 of Part Three, until 31 December 2017, the competent authorities may exempt from the IRB treatment certain categories of equity exposures held by institutions and EU subsidiaries of institutions in that Member State as at 31 December 2007.	1 if no exception granted	1 if 0 or NA in part 1
P68	Transitional provision on the calculation of own fund requirements for exposures in the form of covered bonds :: Until 31 December 2017, competent authorities may waive in full or in part the 10 % limit for senior units issued by French Fonds Communs de Créances or by securitisation entities which are equivalent to French Fonds Communs de Créances laid down in points (d) and (f) of Article 129(1), provided that conditions specified in points (a) and (b) of Article 496(1) are fulfilled.	1 if no exception granted	1 if 0 or NA in part 1
P69	Transitional provision for calculating the leverage ratio :: By way of derogation from Article 429(2) of Regulation (EU) No 575/2013, during the period from 1 January 2014 to 31 December 2017, competent authorities may permit institutions to calculate the end-of-quarter leverage ratio where they consider that institutions may not have data of sufficiently good quality to calculate a leverage ratio that is an arithmetic mean of the monthly leverage ratios over a quarter.	1 if no exception granted	1 if 0 or NA in part 1
P70	Transitional provisions for Basel I floor :: The competent authorities may, after consulting EBA, waive the application of point (b) of Article 500(1) of Regulation (EU) No 575/2013 to institutions provided that all the requirements for the IRB Approach set out in Part Three, Title II, Chapter 3, Section 6 of that Regulation or the qualifying criteria for the use of the Advanced Measurement Approach set out in Part Three, Title III, Chapter 4 of that Regulation, as applicable, are met.	1 if no exception granted	1 if 0 or NA in part 1