ASSIFACT
Associazione Italiana per il Factoring

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OGGETTO: COMMISSIONE CREDITI E RISK MANAGEMENT
Riforma Basilea 3

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Si informa la Commissione in oggetto che la Commissione Europea ha posto in consultazione le proprie proposte di modifica della Direttiva 2013/36/EU (CRD) e del Regolamento (EU) N. 575/2013 (CRD).

I suddetti documenti per la consultazione sono allegati per pronto riferimento e disponibili, rispettivamente, ai seguenti indirizzi:

- CRD: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13252-Alignment-of-EU-rules-on-capital-requirements-to-international-standards-review-processes-_it
- CRR: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12015-Alignment-EU-rules-on-capital-requirements-to-international-standards-prudential-requirements-and-market-discipline-_it

Fra le disposizioni in consultazione, si segnala l'inclusione, in risposta alle istanze del settore, di talune previsioni di particolare interesse per l'industria del factoring, quali ad esempio l'istituzione di appositi portafogli destinati ai crediti commerciali acquistati verso imprese nell'ambito dei metodi interni e l'apertura all'inclusione dell'assicurazione del credito come misura di mitigazione del rischio di credito.

Al fine di determinare la posizione del settore verso tale consultazione e informare l'attività della Federazione Europea del factoring (EUF) in materia, d'intesa con il Presidente ed il Coordinatore della Commissione si comunica il **riavvio del gruppo di lavoro "Riforma Basilea 3"**, già attivato in occasione della prima consultazione (2019).

Si invitano i membri della Commissione a verificare la composizione del gruppo (riportata di seguito) e, se del caso, **segnalare a efact@assifact.it eventuali sostituzioni e/o integrazioni entro il 5 novembre p.v.**

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Le attività del GdI si svolgeranno idealmente nel mese di novembre.

Si ricorda che il presente documento è pubblicato nell'Area Commissioni dell'Area Riservata del sito associativo, a cui i membri delle Commissioni Tecniche possono accedere attraverso le credenziali personalizzate ricevute.

EUROPEAN
COMMISSION

Brussels, 27.10.2021
COM(2021) 663 final

2021/0341 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks, and amending Directive 2014/59/EU

(Text with EEA relevance)

{SEC(2021) 380 final} - {SWD(2021) 320 final} - {SWD(2021) 321 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The proposed amendment to Directive 2013/36/EU (the Capital Requirements Directive or CRD) is part of a legislative package that includes also amendments to Regulation (EU) No 575/2013 (the Capital Requirements Regulation or CRR)[1].

In response to the Great Financial Crisis of 2008-09 (GFC), the Union implemented substantial reforms of the prudential framework applicable to banks in order to enhance their resilience and thus help prevent the recurrence of a similar crisis. Those reforms were largely based on international standards adopted since 2010 by the Basel Committee on Banking Supervision (BCBS)[2]. The standards are collectively known as the Basel III standards, the Basel III reforms or the Basel III framework[3].

The global standards developed by the BCBS have become increasingly important due to the ever more global and interconnected nature of the banking sector. While a globalised banking sector facilitates international trade and investment, it also generates more complex financial risks. Without uniform global standards, banks could choose to establish their activities in the jurisdiction with the most lenient regulatory and supervisory regimes. This might lead to a regulatory race to the bottom to attract bank businesses, increasing at the same time the risk of global financial instability. International coordination on global standards limits this type of risky competition to a large extent and is key for maintaining financial stability in a globalised world. Global standards also simplify the life of internationally active banks – among which are a good number of EU banks – as they guarantee that broadly similar rules are applied in the most important financial hubs worldwide.

The EU has been a key proponent of international cooperation in the area of banking regulation. The first set of post-crisis reforms that are part of the Basel III framework have been implemented in two steps:

- in June 2013 with the adoption of CRR[4] and CRD IV[5];
- in May 2019 with the adoption of Regulation (EU) 2019/876[6], also known as CRR II, and Directive (EU) 2019/878, also known as CRD V[7].

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1 COM(2021) 664.

2 Members of the BCBS comprise central banks and bank supervisors from 28 jurisdictions worldwide. Among the EU Member States, Belgium, France, Germany, Italy, Luxembourg, the Netherlands, and Spain, as well as the European Central Bank are members of the BCBS. The European Commission and the EBA participate in BCBS meetings as observers.

3 The consolidated Basel III framework is available at https://www.bis.org/bcbs/publ/d462.htm.

4 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 321, 26.6.2013, p. 6).

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

6 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 (CIU), large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012.

The reforms implemented so far focused on increasing the quality and quantity of regulatory capital that banks have to hold to cover potential losses. Furthermore, they aimed at reducing banks' excessive leverage, increasing banks' resilience to short-term liquidity shocks, reducing their reliance on short-term funding and their concentration risk, and addressing too-big-to-fail problems[8].

As a result, the new rules strengthened the criteria for eligible regulatory capital, increased minimum capital requirements, and introduced new requirements for credit valuation adjustment[9] (CVA) risk and for exposures to central counterparties[10]. Furthermore, several new prudential measures were introduced: a minimum leverage ratio requirement, a short-term liquidity ratio (known as the liquidity coverage ratio), a longer-term stable funding ratio (known as the net stable funding ratio), large exposure limits[11] and macro-prudential capital buffers[12].

Thanks to this first set of reforms implemented in the Union[13], the EU banking sector has become significantly more resilient to economic shocks and entered the COVID-19 crisis on a significantly more stable footing when compared to its condition at the onset of the GFC.

In addition, temporary relief measures were taken by supervisors and legislators at the outset of the COVID-19 crisis. In its Interpretative Communication on the application of the accounting and prudential frameworks to facilitate EU bank lending supporting businesses and households amid COVID-19 of 28 April 2020[14], the Commission confirmed the flexibility embedded in the prudential and accounting rules as highlighted by the European Supervisory Authorities and international bodies. On that basis, in June 2020, the co-legislators adopted targeted temporary amendments to specific aspects of the prudential framework – the so-called CRR "quick fix" package[15]. Together with resolute monetary and fiscal policy measures[16], this helped banks to keep on lending to households and companies during the pandemic. This, in turn, helped mitigate the economic shock[17] resulting from the pandemic.

While the overall level of capital in the EU banking system is now considered satisfactory on average, some of the problems that were identified in the wake of the GFC have not yet been addressed. Analyses performed by the EBA and the ECB have shown that the capital

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7 Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures.

8 See https://www.bis.org/publ/bcbs189.htm.

9 CVA is an accounting adjustment to the price of a derivative to account for counterparty credit risk.

10 These were the only significant changes to the part of the standards that deal with risk-based capital requirements that were introduced as part of the first stage of the Basel III reform.

11 A minimum requirement on large exposure limits was already a feature of Union legislation, but was a novelty for the Basel standards.

12 More specifically the capital conservation buffer (CCB), the countercyclical capital buffer (CCyB), the systemic risk buffer (SRB), and capital buffers for global and other systemically important banks (respectively, G-SII and O-SII).

13 Those first set of reforms have also been implemented in most jurisdictions worldwide as can be observed in the eighteenth progress report on adoption of the Basel regulatory framework published in July 2020 (see https://www.bis.org/bcbs/publ/d506.htm).

14 See https://ec.europa.eu/info/publications/200428-banking-package-communication_en.

15 See https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0873&from=EN.

16 A comprehensive list of such measures has been collected by the ESBR, see "Policy measures in response to the COVID-19 pandemic".

17 In its COVID-19 vulnerability analysis published in July 2020, the ECB showed that the largest euro area banks would be sufficiently capitalised to withstand a short-lived deep recession and that the number of those banks with insufficient capital resources in case of a more severe recession would be limited (see https://www.bankingsupervision.europa.eu/press/pr/date/2020/html/ssm.pr200728_annex~d36d893ca2.en.pdf).

requirements calculated by EU banks using internal models demonstrated a significant level of variability that was not justified by differences in the underlying risks and that ultimately undermines the reliability and comparability of their capital ratios. In addition, the lack of risk sensitivity in the capital requirements calculated using standardised approaches results in insufficient or unduly high capital requirements for some financial products or activities (and hence for specific business models primarily based on them). In December 2017, the BCBS agreed on a final set of reforms[18] to the international standards to address these problems. In March 2018, the G20 Finance Ministers and Central Bank Governors welcomed these reforms and repeatedly confirmed their commitment to full, timely and consistent implementation. In 2019, the Commission announced its intention to table a legislative proposal to implement these reforms in the EU prudential framework.[19]

In light of the COVID-19 pandemic, the preparatory work of this proposal has been delayed. The delay reflected the BCBS's decision of 26 March 2020 to postpone the previously agreed implementation deadlines for the final elements of the Basel III reform by one year. [20]

Considering the above, the present legislative initiative has two general objectives: contributing to financial stability and contributing to the steady financing of the economy in the context of the post-COVID-19 crisis recovery. These general objectives can be broken down in four more specific objectives:

(1) to strengthen the risk-based capital framework, without significant increases in capital requirements overall;

(2) to enhance the focus on ESG risks in the prudential framework;

(3) to further harmonise supervisory powers and tools; and

(4) to reduce banks' administrative costs related to public disclosures and to improve access to banks' prudential data.

(1) To strengthen the risk-based capital framework

The temporarily stressed economic conditions have not modified the need to deliver on this structural reform. Completing the reform is necessary to address the outstanding issues, to further strengthen EU banks' financial soundness, putting them in a better position to support economic growth and withstand potential future crises, and to facilitate the comparability of capital levels across banks. The implementation of the final Basel III elements is also necessary to provide institutions with the necessary regulatory certainty, completing a decade-long reform of the prudential framework.

Finally, completing the reform is in line with the EU's commitment to international regulatory cooperation and the concrete actions some of its partners have announced or have already taken to implement the reform timely and faithfully.

(2) To enhance the focus on ESG risks in the prudential framework

Another equally important need for reform stems from the Commission's ongoing work on the transition to a sustainable economy. The Commission Communication on the European Green Deal (EGD)[21] and Commission Communication on achieving the EU's 2030 Climate

[18] See https://www.bis.org/bcbs/publ/d424.htm

[19] See https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_19_6269.

[20] More specifically to 1 January 2023 for the starting date of application and to 1 January 2028 for the full application of the final elements of the reform.

[21] See https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1588580774040&uri=CELEX:52019DC0640.

Target ('Fit for 55')[22] clearly set out the Commission's commitment to transform the EU economy into a sustainable economy, while also dealing with the inevitable consequences of climate change. It also announced a Sustainable Finance Strategy[23] that builds on previous initiatives and reports, such as the action plan on financing sustainable growth[24] and the reports of the Technical Expert Group on Sustainable Finance[25], but reinforces the Commission's efforts in this area to bring them in line with the ambitious goals of the EGD.

The transition towards the Commission's sustainability goals requires unprecedented financing efforts to mitigate and adapt to climate change, rebuild natural capital and strengthen resilience and wider social capital. Public finances alone will not be enough. Private investment of the transition to a sustainable, carbon-neutral, circular and just economy needs to scale-up to meet the estimated amount of resources that need to be deployed to achieve these goals. Putting green and sustainable financing at the heart of the financial system is the aim of the Commission's strategy for green financing. Bank-based intermediation will therefore play a crucial role in financing the transition to a more sustainable economy. At the same time, this transition is likely to entail risks for banks that they will need to properly manage to ensure that risks to financial stability are minimised. This is where prudential regulation is needed and where it can play a crucial role. EU strategy acknowledged this and highlighted the need to include a better integration of environmental, social and governance (ESG) risks into the EU prudential framework. The present legal requirements alone are insufficient to provide incentives for a systematic and consistent management of ESG risks by banks.

(3) To further harmonise supervisory powers and tools

Another area of focus is the proper enforcement of prudential rules. Supervisors need to have at their disposal the necessary tools and powers to this effect (e.g. powers to authorise banks and their activities, assess the suitability of their management, or sanction them in case they break the rules). While the EU legislation ensures a minimum level of harmonisation, the supervisory toolkit and procedures vary greatly across Member States. This fragmented regulatory landscape in the definition of certain powers and tools available to supervisors and their application across Member States undermines the level playing field in the internal market and raises doubts about the sound and prudent management of EU banks and their supervision. This problem is particularly acute in the context of the Banking Union. Differences across 21 different legal systems prevent the Single Supervisory Mechanism (SSM) from performing its supervisory functions effectively and efficiently. Moreover, cross-border banking groups have to deal with a number of different procedures for the same prudential issue, unduly increasing their administrative costs.

(4) To reduce banks' administrative costs related to public disclosures and improve access to banks' prudential data.

This proposal is also necessary to further enhance market discipline. This is another important tool in order for investors to exercise their role of monitoring the behaviour of banks. To do so, they need to access the necessary information. The current difficulties related to the access to prudential information deprive market participants from the information they need about banks' prudential situations. This ultimately reduces the effectiveness of the prudential

22 See https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=COM:2021:550:FIN

23 See COM(2021) 390 final.

24 See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0097.

25 See https://ec.europa.eu/info/publications/sustainable-finance-high-level-expert-group_en.

framework for banks and potentially raises doubt about the resilience of the banking sector, especially in periods of stress. For this reason, the proposal aims to centralise disclosures of prudential information with a view to increase access to prudential data and comparability across industry. The centralisation of disclosures in a single access point established by the EBA is also aimed at reducing the administrative burden for institutions, especially small and non-complex ones.

Another cross-sectoral objective, providing a robust EU framework for third country groups providing banking services in the EU, has taken a new dimension after Brexit. The establishment of third country branches (TCBs) is fundamentally subject only to national legislation and harmonised to a very limited extent by the CRD. The recent report by the EBA[26] to the Institutions shows that the current patchy regulatory landscape offers TCBs significant opportunities for regulatory and supervisory arbitrage to conduct their banking activities on the one hand, whilst leading to a lack of supervisory oversight and increased financial stability risks for the EU on the other hand.

Supervisors often lack the information and powers that they need to properly address those risks. The absence of common prudential, governance and detailed supervisory reporting requirements, as well as the insufficient exchange of information between the authorities in charge of supervising different entities/activities of a third country group leaves blind spots. The EU is the only major jurisdiction where the consolidating supervisor does not have the full picture of the activities of third country groups operating via both subsidiaries and branches. These shortcomings are not only creating risks for the financial stability and market integrity of the EU, but also impacting the level playing field among third country groups operating across different Member States, as well as vis-à-vis banks headquartered in the EU.

• **Consistency with existing policy provisions in the policy area**

Several elements of the CRD and CRR proposals follow work undertaken at international level, or by the EBA, whilst other adaptations of the prudential framework have become necessary due to the practical experience gained since the national transposition and application of the CRD, including in the context of the Single Supervisory Mechanism.

The proposal introduces amendments to the existing legislation and renders it fully consistent with the existing policy provisions in the area of prudential regulation and supervision of banks. The review of the CRR and of the CRD aims at finalising the Basel III reform implementation in the EU introducing measures that are needed to further strengthen resilience of the banking sector.

• **Consistency with other Union policies**

Almost ten years passed since the European Heads of State and Governments agreed to create a Banking Union; two pillars of the Banking Union – single supervision and resolution – are in place, resting on the solid foundation of a single rulebook for all EU institutions.

This proposal aims at ensuring a continued single rulebook for all EU institutions, whether inside or outside the Banking Union. The overall objectives of the initiative, as described above, are fully consistent and coherent with the EU's fundamental goals of promoting financial stability, reducing the likelihood and the extent of taxpayers' support in case an

[26] EBA/REP/2021/20. The CRD requires the EBA to report on the regulatory arbitrage resulting from the current different treatments of TCBs. This report takes stock of the national regimes for TCBs and confirms that significant differences persist in the national treatment of these branches and in the degree of involvement of the host-supervisor.

institution is resolved, as well as contributing to a harmonious and sustainable financing of economic activity, which is conducive to a high level of competitiveness and consumer protection.

Lastly, with the recognition of ESG-related risks and the incorporation of ESG elements in the prudential framework, this initiative complements the EU broader strategy for a more sustainable and resilient financial system.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal considers actions to frame the taking up, the pursuit and the supervision of the business of banks within the Union, with the objective of ensuring the stability of the internal market. One of the fundamental components of the Union's financial system, banking is currently providing the largest part of financing within the internal market. The Union has a clear mandate to act in the area of the internal market and the appropriate legal basis consists of the relevant Treaty Articles[27] underpinning Union competences in this area.

The proposed amendments are built on the same legal basis as the legislative acts that are being amended, i.e. Article 114 TFEU for the proposal for a regulation amending CRR and Article 53(1) TFEU for the proposal for a directive amending CRD.

• Subsidiarity (for non-exclusive competence)

The legal basis falls within the internal market area, which is considered a shared competence, as defined by Article 4 TFEU. Most of the actions considered represent updates and amendments to existing Union law, and as such, they concern areas where the Union has already exercised its competence and does not intend to cease exercising such competence. A few actions (particularly those amending the CRD) aim to introduce an additional degree of harmonisation in order to achieve consistently the objectives defined by that Directive.

Given that the objectives pursued by the proposed measures aim at supplementing already existing EU legislation, they can be best achieved at EU level rather than by different national initiatives. National measures aimed at, for example, implementing rules that have an inherent international footprint elements – such as a global standard like Basel III or better tackling ESG-related risks - into applicable legislation would not be as effective in ensuring financial stability as EU rules. In terms of supervisory measures, disclosures and third country branches, if the initiative is left at national level only, this may result in reduced transparency and increased arbitrage costs, leading to potential distortion of competition and affecting capital flows. Moreover, adopting national measures would be legally challenging, given that the CRR already regulates banking matters, including risk weights, reporting and disclosures and other CRR-related requirements.

The amendment of the CRR and the CRD is thus considered to be the best option. It strikes the right balance between harmonising rules and maintaining national flexibility where essential, without hampering the single rulebook. The amendments would further promote a uniform application of prudential requirements, the convergence of supervisory practices and ensure a level playing field throughout the internal market for banking services. This is

[27] The relevant Treaty Articles conferring the Union the right to adopt measures are those concerning the freedom of establishment (in particular Article 53 TFEU), the freedom to provide services (Article 59 TFEU), and the approximation of rules which have as their object the establishment and functioning of the internal market (Article 114 TFEU).

particularly important in the banking sector where many credit institutions operate across the EU internal market. Full cooperation and trust within the single supervisory mechanism (SSM) and within the colleges of supervisors and competent authorities outside the SSM is essential to ensure the effective supervision of credit institutions on a consolidated basis. National rules would not achieve these objectives.

- **Proportionality**

Proportionality has been an integral part of the impact assessment accompanying the proposal. The proposed amendments in different regulatory fields have been individually assessed against the proportionality objective. In addition, the lack of proportionality of the existing rules has been assessed in several domains and specific options have been analysed aiming at reducing administrative burden and compliance costs for smaller institutions.

For instance, the amendments introducing ex-ante notification requirements for banks on events with prudential relevance are subject to materiality thresholds, below which events need not be notified. Under the new third country branch framework, those branches that qualify as small and less risky (class 2 third country branches) are subject to comparably less stringent prudential and reporting requirements. Lastly, the new requirements for ex-ante fit-and-proper assessment have been calibrated to target only large financial institutions.

- **Choice of the instrument**

The measures are proposed to be implemented by amending the CRR and the CRD through a Regulation and a Directive, respectively. The proposed measures indeed refer to or further develop already existing provisions inbuilt in those legal instruments (i.e. the framework for calculating risk-based capital requirements, powers and tools made available to supervisors across the Union).

Some of the proposed CRD amendments affecting sanctioning powers would leave Member States with a certain degree of flexibility to maintain different rules at the stage of their transposition into national law.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The Commission has taken several steps and carried out various initiatives in order to assess whether the current banking prudential framework in the EU and the implementation of the outstanding international standards are adequate to contribute to ensuring that the EU banking system is stable and resilient to economic shocks and remains a sustainable source of steady funding for the EU economy.

The Commission gathered stakeholders’ views on specific topics in the areas of credit risk, operational risk, market risk, CVA risk, securities financing transactions, as well as in relation to the output floor. In addition to these elements related to the Basel III implementation, the Commission has also consulted on certain other subjects with a view to ensuring convergent and consistent supervisory practices across the Union and alleviating the institutions’ administrative burden.

A public consultation carried out between October 2019 and early January 2020[28] had been preceded by a first exploratory consultation conducted in spring 2018[29], seeking first views of a targeted group of stakeholders on the international agreement. The results of the two consultations have fed into the preparation of the legislative initiative accompanying the impact assessment.

All the initiatives mentioned above have provided clear evidence of the need to update and complete the current rules in order to i) further reduce the risks in the banking sector, and ii) enhance the ability of institutions to channel adequate funding to the economy.

Annex 2 of the impact assessment provides a summary of the consultation.

- **Collection and use of expertise**

The Commission made use of the expertise of the EBA, which prepared an impact analysis on the implementation of Basel III reform finalisation[30]. In addition, the Commission services considered the ECB macroeconomic analysis. This is presented in the impact assessment and updates the previous macroeconomic analysis published in December 2019.

- **Impact assessment[31]**

The impact assessment considered a range of policy options across four key policy dimensions, in addition to the baseline situation where no Union action is taken. As shown by the simulation analysis and macroeconomic modelling developed in the impact assessment, implementing the preferred options and taking into account all the measures in the proposal is expected to lead to a weighted average increase in EU banks' minimum capital requirements of +6.4% to +8.4% in the long term (by 2030), after the envisaged transitional period. In the medium term (in 2025), the increase is expected to range between +0.7% and +2.7%.

According to estimates provided by the EBA, this impact could lead a limited number of large EU banks (10 out of 99 banks in the test sample) to have to raise collectively additional capital amounts (less than EUR 27bn for the 10 banks) in order to meet the new minimum capital requirements under the preferred option. To put this amount into perspective, the 99 banks in the sample (representing 75% of EU banking assets) held a total amount of regulatory capital worth EUR 1414bn at the end of 2019 and had combined profits of EUR 99.8bn in 2019.

While banks would incur one-off administrative and operational costs to implement the changes in the rules, the simplifications implied by several of the preferred options (e.g. removal of internally modelled approaches) are expected to reduce the recurring costs compared to today.

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28 See https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12015-Alignment-EU-rules-on-capital-requirements-to-international-standards-prudential-requirements-and-market-discipline-/public-consultation_en.

29 See https://ec.europa.eu/info/consultations/finance-2018-basel-3-finalisation_en

30 In its report published in December 2020, the EBA provided the impacts on the same sample of 99 banks but based on Q2 2018 data which was used in their previous impact analysis. From Q2 2018 to Q4 2019, the total increase in minimum capital requirements decreased by over 5 percentage points (i.e. from +24.1% to +18.5%), while the capital shortfall across these banks has more than halved (from EUR 109.5 bn to EUR 52.2 bn).

31 SWD(2021) 321 (RIA). The impact assessment did not include an assessment of the proposal on third country branches, as the EBA Report on which the analysis is based was released on 23 June 2021. An assessment on the impact of the proposal based on the EBA Report has been included in this Explanatory memorandum as part of the section on third country branches.

- **Regulatory fitness and simplification**

This initiative is aimed at completing the EU implementation of the international prudential standards for banks agreed by the BCBS between 2017 and 2020. It would complete the EU implementation of the Basel III reform that was launched by the Basel Committee in the wake of the GFC. That reform was in itself a comprehensive review of the prudential framework that was in place before and during the GFC, namely the Basel II framework (in the EU that framework was implemented through Directive 2006/48/EC, i.e. the original CRD). The Commission used the results of the comprehensive review by the BCBS of the prudential framework, together with input provided by the EBA, the ECB and other stakeholders, to inform its implementation work. Pending the implementation of the final Basel III reforms in the EU, a fitness check or refit exercise has not been carried out yet.

- **Fundamental rights**

The EU is committed to high standards of protection of fundamental rights and is signatory to a broad set of conventions on human rights. In this context, the proposal is not likely to have a direct impact on these rights, as listed in the main UN conventions on human rights, the Charter of Fundamental Rights of the European Union, which is an integral part of the EU Treaties and the European Convention on Human Rights (ECHR).

4. BUDGETARY IMPLICATIONS

The proposal does not have implications for the Union budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

It is expected that the proposed amendments will start entering into force in 2023 at the earliest. The amendments are tightly inter-linked with other provisions of the CRR and the CRD that are already in force and have been monitored since 2014 and, with respect to the measures introduced by the risk reduction measures package, since 2019.

The BCBS and the EBA will continue to collect the necessary data for the monitoring of the key metrics (capital rations, leverage ratio, liquidity measures). This will allow for the future impact evaluation of the new policy tools. Regular Supervisory Review and Evaluation Process (SREP) and stress testing exercises will also help monitoring the impact of the new proposed measures on affected institutions and assessing the adequacy of the flexibility and proportionality provided to cater for the specificities of smaller institutions. Additionally, the EBA, together with the SSM and the national competent authorities, are developing an integrated reporting tool (EUCLID) which is expected to be an useful instrument to monitor and evaluate the impact of the reforms. Finally, the Commission will continue to participate in the working groups of the BCBS and the joint task force established by the European Central Bank (ECB) and by the EBA, that monitor the dynamics of institutions' own funds and liquidity positions, globally and in the EU, respectively.

- **Explanatory documents (for directives)**

No explanatory documents are considered necessary.

- **Detailed explanation of the specific provisions of the proposal**

Independence of competent authorities

Recent developments showed the need for clearer and more operational provisions on the principle of independence of competent authorities. Therefore, Article 4 is amended to clarify how Member States must ensure that the independence of competent authorities, including their staff and governance bodies, is preserved. Minimum requirements are introduced to prevent conflicts of interests in the supervisory tasks of competent authorities,their staff and governance bodies, and EBA is mandated to develop guidelines in that regard, taking into account international best practices.

Supervisory powers

For it to be efficient, the Banking Union relies on the convergence of supervisory practices and, ultimately, on a sufficient degree of harmonisation of the various national rules framing the supervisory action. A certain number of discrepancies between Member States are, in this regard, considered as very detrimental to the proper functioning of the Banking Union. This is, in particular, the case of supervisory powers. While the CRD lists a minimum set of supervisory powers that must be available to competent authorities across the Union, some of them are already in place in many Member States while missing in others. This situation leads to an uneven playing field and, potentially, to regulatory arbitrage. It also makes impossible for some competent authorities to intervene in certain transactions conducted by a supervised entity that may raise strong prudential and/or money laundering/terrorism financing concerns.

To remedy this situation, the Commission's proposal expands the list of supervisory powers available in the CRD to competent authorities to cover operations such as acquisitions by a credit institution of a material holding in a financial or non-financial entity (new Chapter 3 in the current Title III), the material transfer of assets or liabilities (new Chapter 4) and merger or divisions (new Chapter 5). These supervisory powers will ensure that competent authorities are notified in advance (Articles 27a, 27f and 27j), have at their disposal all the necessary information to perform a prudential assessment of these operations, and can ultimately oppose to the completion of operations (Articles 27b, 27g and 27k) detrimental to the prudential profile of the supervised entities undertaking them.

These new supervisory powers are framed in order stay proportionate, and more specifically to avoid undue additional administrative burden for supervised entities and competent authorities. First of all, powers related to acquisition by credit institutions of qualifying holdings and transfers of assets and liabilities only apply in case of transactions deemed material. A tacit approval mechanism is provided for, similar to the one in place for the acquisition of material holdings in credit institutions, in order to give legal certainty to supervised entities and to prevent that competent authorities be obliged to engage in a standard procedure of adoption of decisions where these are not necessary. Only in the case of mergers and divisions, a prior approval from competent authorities is imposed in all cases (unless the operation is internal to a group), as long as it does not lead to a situation where the new entity stemming from the merger of the division would need to seek an authorisation as a credit institution or an approval as a financial holding company.

In addition, in order to ensure a proper articulation between the various assessments (possibly involving multiple competent authorities) that could have to be undertaken for one single operation, a close cooperation between the competent authorities involved is expected, and framed by requirements to cross notifications and information sharing (Articles 27c, 27h and 27k). To facilitate this cooperation, but also to ensure a proper streamlining of the notification and assessments processes and to avoid undue administrative burden for both supervised entities and competent authorities, a certain number of EBA mandates are proposed to supplement the legal framework envisaged in the CRD for these new supervisory powers. These mandates concern matters such as the information to be sent to the competent authorities, the assessment process, added detail on the relevant assessment criteria, or the cooperation between the various competent authorities which may be involved.

These amendments were subject to dedicated discussions within the Expert Group on Banking, Payments and Insurance.

Fit & Proper

The fit-and-proper framework is one of the least harmonised areas in EU bank supervisory law and, accordingly, amendments to the CRD are deemed necessary to ensure a more consistent, efficient and effective supervision of members of the management body and of key function holders. Despite the efforts made by regulators and supervisors[32] to ensure further supervisory convergence, legislative modifications are necessary to improve their oversight. The current framework for board members, based on national laws implementing the CRD, is largely principle-based and therefore does not detail how and when supervisors should conduct fit-and-proper assessments. As regards key function holders, the absence of a definition and a framework in the CRD has led some supervisors to not properly identify them and therefore to not carry out an assessment of their suitability to perform their duties, while others do it in a variety of ways. This fragmented regulatory landscape is an acute problem, particularly in the Banking Union. Therefore, in addition to the fit-and-proper criteria in Article 91, Articles 91a and 91b are introduced to clarify the role of banks and competent authorities for checking the compliance of board members, including the timing of such assessment. Articles 91c and 91d are added to set minimum requirements for key function holders.

To ensure financial stability, in urgent situations of removal or replacement of members of the management body or senior management in the context of application of early intervention measures or implementation of resolution action by the competent authorities and resolution authorities, the fit-and-proper assessment should be carried out after those persons have taken up their duties.

Clarification of the interplay between the failing or likely to fail declaration (FOLTF) and the withdrawal of authorisation

Article 18 is amended in order to clarify that where a credit institution is declared failing or likely to fail (FOLTF) by the competent authority or by the resolution authority, the competent authority is empowered to withdraw of the banking authorisation.

Some recent cases highlighted a suboptimal alignment between the prudential and the resolution frameworks. To make an example, under the Union's bank resolution framework, not only actual insolvency or actual illiquidity, but also likely insolvency and likely illiquidity constitute grounds for determining that a credit institution is FOLTF. Instead, national insolvency laws usually require actual insolvency and/or actual illiquidity to occur before an insolvency proceeding can be opened. Some of the elements which are embedded into the national legislative framework for insolvency cannot be addressed via changes to the CRD. However, it is proposed to clarify in Article 18, point (g) that in case a credit institution is

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32 See https://www.eba.europa.eu/regulation-and-policy/internal-governance/joint-esma-and-eba-guidelines-on the-assessment-of-the-suitability-of-members-of-the-management-body.
See https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.fap_guide_201705_rev_201805.en.pdf

FOLTF and, at the same time, it does not meet the other conditions to enter resolution (presence of public interest, absence of a market driven alternative to resolve the crisis), it should discontinue the banking business and be liquidated under national laws.

Environmental, social and governance (ESG) risks

New provisions are introduced and adjustments made to several Articles in the CRD and in the CRR in order to address the significant risks that credit institutions will face due to climate change and the profound economic transformations that are needed to manage this and other ESG risks. The provisions in Article 133 on the systemic risk buffer (SyRB) framework may already be used to address various kinds of systemic risks, which may include risks related to climate change. The relevant competent or designated authorities, as applicable, may require credit institutions to maintain a systemic risk buffer to address risks with the potential to have serious negative consequences for the financial system and the real economy in Member States, where imposing a systemic risk buffer rate is deemed effective and proportionate to mitigate the risk. According to Article 133(5), measures taken by the relevant competent or designated authorities under Article 133 can be applied across certain sets or subsets of exposures, for instance those subject to physical and transition risks related to climate change. The suitability of the macroprudential framework for dealing with such risks will be assessed in a comprehensive and structured way in the 2022 review of the macroprudential framework.

Article 73 and Article 74 of the CRD are amended to require that short, medium and long-term horizons of ESG risks be included in credit institutions' strategies and processes for evaluating internal capital needs as well as adequate internal governance.

A reference to the current and forward-looking impacts of ESG risks and a request for the management body to develop concrete plans to address these risks are also introduced in Article 76.

Article 87a of the CRD introduces a sustainability dimension in the prudential framework to ensure a better management of ESG risks and incentivise a better allocation of bank funding across sustainable projects, thus helping the transition to a more sustainable economy. Article 87a also enables competent authorities to review banks' alignment with the relevant Union policy objectives or broader transition trends relating to ESG factors and banks' management of ESG risks over the short, medium and long term, leading to an improved understanding of these risks and enabling competent authorities to address financial stability concerns that could arise from credit institutions' continuing to misprice ESG risks. To ensure the consistency of ESG risk assessments, Article 87a mandates the EBA to specify further the criteria for the assessment of ESG risks, including how they should be identified, measured, managed and monitored as well as how credit institutions should draw concrete plans to address and internally stress test resilience and long-term negative impacts to the ESG risks.

As regards the supervisory review and evaluation process (SREP), the EBA is given the power in Article 98 to issue guidelines on the uniform inclusion of ESG risks in the SREP.

In light of the relevance of future-looking stress tests for gauging environment-related as well as other ESG risks in the review and evaluation process (SREP) under Article 97, Article 100 is amended to enable the EBA together with the other ESAs to develop consistent standards for methodologies to stress test these risks, giving priority to environment-related risks as ESG risk data and methodologies evolve to capture the other factors.

To facilitate the SREP of the credit institutions' exposures, governance and management of ESG risks, Article 98 is amended to require competent authorities to assess the adequacy of institutions' exposures as well as of the arrangements, strategies, processes and mechanisms to manage these risks in their review and evaluation.

In order to facilitate the possibility for competent authorities to address ESG risks affecting the prudential situation of the bank over the short, medium and long term, and to reflect the specificities of these category of risks, a concrete supervisory power to address ESG risks is added in Article 104.

Direct provision of banking services in the EU by third country undertakings

Credit institutions are subject to prudential regulation and supervision to minimise the risk of failure and, when it occurs, to manage that failure to prevent that it may spread in a disorderly manner to other credit institutions and market players and lead to the collapse of the financial system (contagion risk). Hence, one of the main purposes of prudential regulation and supervision is to protect the financial stability of the Union and its Member States.

Taking into account this objective, it is essential to prevent that areas or segments in the markets may fall outside the scope or reach of the system of prudential regulation and supervision, as in this scenario risks could build up in those segments in an unchecked fashion and spread to other parts of the financial system with very damaging effects. This is particularly important for those parts of the financial markets where credit institutions are closely involved.

The financial crisis of 2008-2009 is the latest historical precedent which underlines how small market segments may become the source of significant threats to the financial stability of the Union and its Member States if left outside the scope of prudential regulation and supervision.

For that reason, the provision of banking services in the Union requires having a physical presence in a Member State through a branch or a legal person, as only through such physical presence credit institutions may be subject to effective prudential regulation and supervision in the Union. *A sensu contrario*, the provision of banking services in the Union without a branch or a legal person established in a Member State contributes to creating such type of market segments that fall outside the scope and reach of the Union's prudential regulation and supervision, where risks may build up unchecked and eventually threaten the financial stability of the Union or its Member States.

Hence, undertakings in third countries must set up a branch in a Member State and seek authorisation under Title VI of the CRD for that branch as a condition for being allowed to start conducting banking activities in that Member State. Article 21c is inserted in the CRD to set this requirement explicitly.

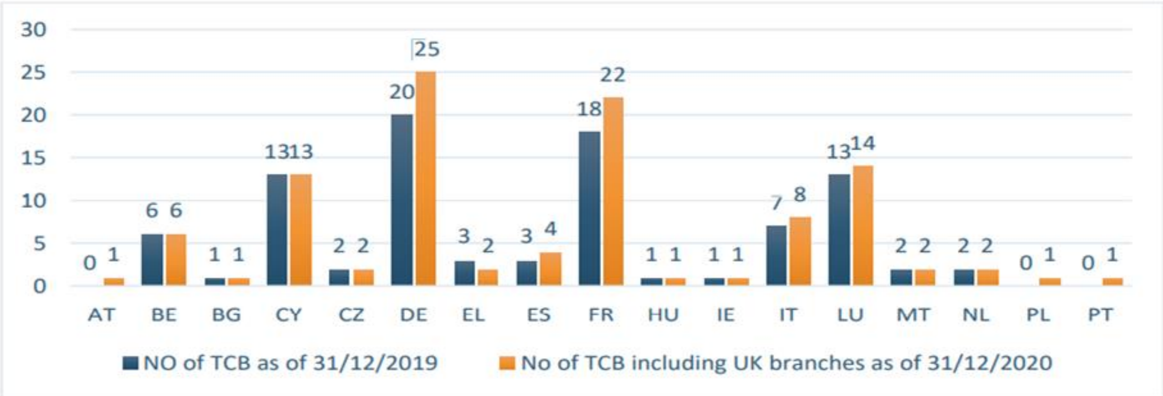
However, this requirement need not apply to cases where such third country undertakings engage in the provision of banking services with clients and counterparts in a Member State through reverse solicitation of services, as in such cases it is the relevant client or counterpart that approaches the undertaking in the third country to solicit the provision of the service.

Third country branches (TCBs)

Overview of TCBs in the EU[33]

As of 31 December 2020, there were 106 TCBs in the EU distributed across 17 Member States. The aggregate amount of total assets held by them on that date was just over EUR 510 billion, 86% of which was concentrated in only four Member States (Belgium, France, Germany and Luxembourg).

There seems to be a trend towards an increasing use of TCBs to access Member States' banking markets, insofar as the total number of TCBs went up by 14 and the amount of assets held by them by EUR 120.5 billion in 2020 relative to 2019.



Source: EBA Report on Third Country Branches

While a majority of TCBs (70 out of 106) held less than EUR 3 billion in assets, there were two individual TCBs holding assets in excess of EUR 30 billion, and another 14 TCBs held assets in an amount between EUR 10 billion and EUR 30 billion (compared to 6 on the same date of the previous year).

As of 31 December 2020, TCBs established in the EU originated from 23 third countries, the most numerous being from China (18), UK (15), Iran (10), USA (9) and Lebanon (9). Several third country groups (23) have TCBs in more than one Member State. In addition, some of those third country groups also have one or more subsidiaries in the EU. For instance, 14 third country groups have both a TCB and a subsidiary in the same Member State. Of these, 9 third country groups have one subsidiary and two or more TCBs in the EU. Two third country groups have a double presence comprising a TCB and a subsidiary in more than one Member State. The largest 15 third country groups operating in the EU hold more than ¾ of their EU assets via TCBs. As regards the impact of TCBs' presence in the EU, it can be measured using the following two metrics:

(a) the ratio of TCBs' aggregate total asset amount per Member State as at 31 December 2019 against the size of the national banking system[34]. This ratio is lower than 1% in 7 Member States, between 1% and 10% in 6 Member States and increases to over 25% in 1 Member State.

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[33] This section is based on the EBA Report on the treatment of incoming third country branches under the national law of Member States of 23 June 2021 (Report on third country branches.docx (europa.eu))

[34] This metric is determined using CBD2 data which refers to data published by the ECB regarding 'Domestic banking groups and stand-alone banks, foreign (EU and non-EU) controlled subsidiaries and foreign (EU and non-EU) controlled branches' for December 2019.

(b) the ratio of TCBs' aggregate total asset amount per Member State as at 31 December 2019 against the size of the national GDP. This ratio is lower than 1% in 7 Member States, between 1% and 10% in 6 Member States and increases to over 25% in 1 Member State.

As for business models and based on available information, 50 TCBs operate as universal banks, while 48 operate only as wholesale banks. Only 4 TCBs operate as retail banks.

Current challenges

As shown in the preceding section, the footprint of TCBs in the EU is already highly significant. In various cases, TCBs hold collectively a very material amount of assets relative to the size of the GDP of their Member State of establishment and of the banking sector of that same Member State. For some TCBs, the individual asset size exceeds the threshold that would make them qualify as significant institutions under the direct supervision of the European Central Bank (ECB) in the context of the Single Supervisory Mechanism (SSM). However, TCBs remain outside the scope of the SSM and not subject to the supervisory requirements laid down in the CRD as they are not credit institutions authorised under Chapter 1 of Title III of that Directive.

In contrast to such background, the establishment of TCBs to provide banking services[35] in the EU is essentially subject to national legislation, as only high level information obligations in relation to them have recently been harmonised as part of CRDV. This creates a patchy regulatory landscape that gives rise to disparate requirements on TCBs in each Member State and to significant challenges for competent authorities to monitor properly the risks that result from the activities they conduct in the EU. For instance:

(a) given the complete absence of a common prudential or governance regulatory framework on TCBs, some of them are subject to only limited requirements in certain Member States;

(b) current EU-wide supervisory cooperation mechanisms do not capture TCBs, which creates blind spots insofar as TCBs generate risks that can spill over in an unfettered fashion to other group entities or to the market. For example, as there is no requirement for competent authorities to exchange comprehensive information on TCBs, authorities supervising a third country group in one Member State lack sufficient information on the TCBs of the same group in another Member State and, by the same token, they also lack adequate tools to deal with such potential spill-over risks;

(c) several third country groups use complex legal structures through a mix of subsidiaries and branches or, depending on the services provided, cross-border operations, to conduct their activities in the EU. Such complex structures can be opaque and very difficult for competent authorities to properly supervise given the different and disjointed set of requirements that apply to each of those. For example, double-hatting of board members can lead to conflicts of interest, while flexible booking and accounting may lead to shifting risk from one entity to the other;

35 These refer to any activities among those listed in Annex I of the CRD when performed by credit institutions, provision of investment services at a large scale as defined in Article 4(1), point (1)(b), and the provision of core banking activities (those listed in points (1) to (3) and (6) by any third country undertaking.

(d) while TCBs should provide services only in the Member States where they are established[36], enforcing compliance with this requirement is not only difficult, but made almost impossible under the current framework due to the growing trend of financial services' digitalisation.

TCBs also raise regulatory arbitrage concerns. Where the Member State of establishment imposes low prudential standards, TCBs may effectively allow third country groups to undercut EU banking requirements where their head office is subject to less stringent prudential or supervisory standards in the relevant third country.

Harmonised TCBs framework

Given the material footprint that TCBs already have in EU banking markets and the currently scattered and disjointed prudential and supervisory requirements that they are subject to, there are obvious risks to the financial stability and market integrity of the EU, as well as opportunities for regulatory arbitrage that need addressing through a new harmonised TCBs framework.

While maintaining the status quo is not a desirable option, subjecting TCBs to the full set of prudential and supervisory requirements that apply to credit institutions under the CRR and the CRD might be disproportionate, as it would not cater appropriately for their distinct features relative to credit institutions with their head office in the EU, and would have a material detrimental effect on such TCBs.

Instead, a more appropriate way forward would be to create an ad hoc set of minimum-harmonising requirements that builds on existing national frameworks of Member States currently in force and ensures minimum standards and consistent requirements throughout the Union . Such framework would provide the necessary clarity, predictability and transparency for third country undertakings wishing to conduct banking services through branches in one or various Member States. It would also align the EU requirements on TCBs with prevailing international practices, insofar as numerous third countries apply similar or equivalent requirements to branches of foreign banks active in their territories.

Title VI of the CRD is, therefore, amended to include provisions on the following:

(a) **authorisation**: the establishment of TCBs is subject to an explicit authorisation procedure and minimum requirements. Those requirements must include cooperation and information arrangements whereby the competent authorities of the TCBs i) have access to enough information on the undertaking in the third country that is the branch's head office (the TCB's "head undertaking") and ii) are able to cooperate with the supervisory authorities of the head undertaking insofar as necessary or relevant to effectively supervise the TCB in the Member State;

(b) **minimum regulatory requirements**: these comprise obligations on TCBs to:

   (i) maintain a minimum capital endowment, calculated as a percentage of the branch's liabilities for larger and riskier TCBs (class 1) or a fixed amount for smaller TCBs (class 2);

[36] According to Recital 19 of the CRD: "The branches of credit institutions authorised in third countries should not enjoy the freedom to provide services under the second paragraph of Article 49 of the Treaty or the freedom of establishment in Member States other than those in which they are established". A TCB can only provide cross-border investment services to professional clients and eligible counterparties if the services are provided by branches authorised under MiFID and in case of an equivalence decision pursuant to Article 47(3) of MIFIR (see Annex 3). However, no equivalence decision has been taken or is envisaged in the near future.

(ii) comply with a liquidity requirement, which for class 1 TCBs must be the same as the liquidity coverage requirement that applies to credit institutions in accordance with Commission Delegated Regulation (EU) 2015/61;

(iii) meet internal governance and risk control requirements, and to implement booking arrangements in order to track the assets and liabilities linked to the business conducted by the TCB in the Member State.

(c) **reporting requirements:** TCBs are required to report regularly to their competent authorities i) information on their compliance with the requirements laid out in the CRD and in national law and ii) financial information in relation to the assets and liabilities on their books;

(d) **supervision**: competent authorities are required to conduct regular reviews of TCBs' compliance with their regulatory requirements, including for AML purposes, and take supervisory measures to ensure or restore compliance with those requirements. Competent authorities of class 1 TCBs are required to include them in the colleges of supervisors of the relevant group, where one already exists, or otherwise set up an ad hoc college for class 1 TCBs of the same group operating in more than one Member State.

For reasons of **proportionality**, and in particular to avoid any unnecessary additional administrative burden for small(er) TCBs, the scope and level of prudential requirements is modulated to differentiate between class 1 and class 2 TCBs. The former class comprises the larger TCBs (i.e. those holding assets equal to or in excess of EUR 5 billion), as well as TCBs authorised to take deposits from retails customers and TCBs considered "non-qualifying", the latter two regardless of their size. Class 2 comprises all TCBs not classified as class 1.

A TCB is considered 'qualifying' where its head office is established in a country i) that has in place a supervisory and regulatory framework for banks and confidentiality requirements that have been assessed as equivalent to those in the Union and ii) that is not listed as a high-risk third country that has strategic deficiencies in its regime on anti-money laundering and counter terrorist financing.

Member States must ensure that their competent authorities have the necessary powers to require TCBs established in their territory to apply for authoritisation as subsidiary institutions under the CRD in specific cases (**power to subsidiarise**). For instance, this power must be capable of being used on a TCB that engages in transactions or business with counterparts in other Member States in contravention of the internal market rules. Moreover, the same power must also be available for using in cases where a TCB poses risks to the financial stability of the relevant Member State or of the EU, taking into account certain systemic risk indicators laid down in the CRD and further detailed in regulatory technical standards.

Where TCBs have assets on their books in an amount equal to or higher than EUR 30 billion, competent authorities must assess on a regular basis whether such TCBs pose a level of risk to the financial stability of the respective Member State and of the EU that is analogous to institutions defined as "systemic" under the CRR and the CRD (**assessment of systemic importance**). The EUR 30 billion threshold must be calculated taking into account the assets booked by all the TCBs belonging to the same third country group in the EU, whether in a single or in various Member States, and measured either as an average over a period of three consecutive years or as a minimum absolute threshold reached for at least 3 years over a period of 5 consecutive years. For the purposes of carrying out the systemic importance assessment, competent authorities must have regard to the systemic risk indicators referred to in the preceding paragraph. Where, in the light of those indicators, competent authorities conclude that the relevant TCBs are systemic, they may require such TCBs to apply for authoritisation as subsidiary institutions under the CRD in order to continue conducting banking activities in the Member State and the EU (**requirement to subsidiarise**). Alternatively, competent authorities may decide either (i) to require the TCBs to restructure their activities or assets so that that they cease to meet the criteria of systemic importance or the EUR 30bn threshold (**requirement to restructure**); or (ii) to impose additional Pillar 2 requirements on the third country group's TCBs and subsidiary institutions in the EU (e.g. additional capital, liquidity, reporting or disclosure requirements), where those Pillar 2 requirements are appropriate and sufficient to mitigate potential risks to financial stability (**Pillar 2 requirements**). Competent authorities may only decide not to impose any of the above requirements on the TCBs where they can justify that the risks that such TCBs pose to financial stability and market integrity would not significantly increase in the absence of those requirements (**decision to defer**). Competent authorities must reassess their decision to defer within one year from the date the decision was made.

The assessment of systemic importance of TCBs belonging to a third country group with branches and subsidiaries across the EU must be led by (i) the consolidating supervisor of the relevant group in the Union, where Article 111 of the CRD applies; (ii) the competent authority that would become the consolidated of the group in the EU in accordance with that Article if the TCBs were treated as subsidiary institutions; or (iii) EBA, where the lead competent authority has not commenced the assessment or the hypothetical consolidated supervisor has not been determined within a period of three months. The decision whether to impose any of the above-referred requirements or to defer imposing such requirements on TCBs assessed as systemic, must be taken as a joint decision by the lead competent authority and the competent authorities responsible for supervising the TCBs and subsidiaries of the same third country group.

Furthermore, the new TCB framework does not supersede or prevent any discretion that Member States may currently have to impose a requirement of general application on undertakings established in certain third countries to conduct banking activities in their territory through subsidiaries authorised in accordance with Chapter 1 of Title III of the CRD.

Impact of the new framework

Under the proposed new framework, TCBs currently operating in the EU will need to be re-authorised. However, the compliance and transitional costs associated with this authorisation and on-going operation would be significantly mitigated by the following circumstances:

(a) TCBs will have a transitional period of 12 months following the 18 months transposition period of the Directive to obtain the authorisation and, therefore, will be able to spread out the transitional costs over that period;

(b) the authorisation and prudential requirements are largely based on existing national requirements in various Member States and, since the new framework contains requirements very similar to those, TCBs would only need to incur limited costs to adapt;

(c) based on 31 December 2020 data, up to 40 out of 106 TCBs authorised to operate in various Member States would have qualified as class 2 and, hence, those 40 would be subject to comparatively less stringent prudential and reporting requirements under the new framework;

(d) based on the same data and as of that date, only 3 TCBs had assets on their books in excess of EUR 30 billion and, thus, would be subject to the assessment of systemic importance.

While TCBs may be subject to additional costs to comply with the new reporting requirements, these would be justified in order to meet the objective of enhancing the protection of financial stability and market integrity.

Review of the administrative sanctioning regime

Periodic penalty payments are introduced as a new enforcement tool aimed at ensuring that credit institutions swiftly comply with the prudential rules. In addition, a clear distinction is made between periodic penalty payments and administrative penalties. The list of breaches subject to administrative penalties and sanctions is supplemented with prudential requirements currently missing on the list of sanctionable breaches under article 67 of the CRD. Articles 66 and 67 of CRD are amended to clarify the definition of "*total annual net turnover*" and define it by reference to the business indicator in the new Article 314 of the CRR.

To ensure a level playing field in the field of sanctioning powers, Member States are required to provide for administrative penalties, periodic penalty payments and other administrative measures in relation to breaches of national provisions transposing the CRD and the CRR. In addition, procedural safeguards are introduced for the effective application of penalties especially in the case of accumulation of administrative and criminal penalties on the same breach. To this end, Article 70 of CRD is amended to require Member States to lay down rules on the cooperation between competent authorities and judicial authorities in cases of duplication of criminal and administrative proceedings and penalties on the same breach. These rules are intended to provide for a sufficient level protection for the natural or legal person subject to this duplication of proceedings in accordance with the "*ne bis in idem principle*".

Review of the composition of Pillar 2 requirements

In order to enhance the internal coherence of the regulatory framework, CRD V aligned the nature of regulatory capital that banks must hold to meet the Pillar 2 capital requirement with the minimal capital composition of the Pillar 1 capital requirement. By derogation from the general rule set out in Article 104a(4) of the CRD, supervisors have the discretion to decide, on a case by case basis, to impose Pillar 2 capital requirements with a higher share of Tier 1 capital or CET 1 capital. This new treatment has been implemented only recently during the COVID-19 crisis. While it is still too early for comprehensive conclusions on the recent alignment, a first review has confirmed the usefulness of a consistent standard composition of minimum (Pillar 1) and additional (Pillar 2) capital requirements.

Adjustments accompanying the introduction of the output floor

The introduction of the output floor (OF) in the calculation of the total risk exposure amount (TREA) as set out in Article 92 of the CRR will have an impact on those own funds requirements set out in the CRD the calculation of which depends on TREA. Those requirements are the capital conservation buffer (CCB) requirement, the countercyclical capital buffer (CCyB) requirement, the buffer requirements for global systemically-important and other systemically-important institutions (G-/O-SIIs), the systemic risk buffer (SyRB) requirement, and – to the extent a competent authority uses an approach that sets it as a percentage of TREA from the outset[37] – the institution-specific Pillar 2 requirement (P2R).

Two of those requirements, namely the P2R and the SyRB, can be used to address risks that are similar in nature to those addressed by the OF. Consequently, there is a possibility that certain risks (e.g. model risk[38]) could be double-counted once the OF starts to apply. This needs to be avoided. The EBA's advice on the Basel III finalisation includes a specific recommendation on this issue and calls, more generally, on competent and designated authorities to reconsider the appropriate level of P2R and the SyRB, respectively, once the OF will start to apply.

In view of the above, the proposal amends Articles 104a and 133 of the CRD - setting out the rules on the P2R and the SyRB, respectively - by introducing safeguards aimed at preventing unjustified increases in the P2R and the SyRB requirement following an institution becoming bound by the OF[39]:

- the P2R and the SyRB requirement will be "frozen" to avoid automatic (also referred to as "arithmetic") increases in the amount of regulatory capital required under those two requirements. This safeguard is justified by the fact that the increase in RWAs due to the institution becoming bound by the OF is, all else being equal, purely arithmetic and is not reflective of an actual increase in risks that would justify requiring additional capital from the institution;
- the institution's competent authority will be required to review the calibration of the P2R and the competent or designated authority, as applicable, will be required to review the calibration of the the SyRB requirement, respectively, to establish whether double-counting of risk is present, and if so, to re-calibrate those requirements to avoid such double-counting;
- the two requirements will remain frozen until the respective reviews will be concluded and the relevant decisions on the appropriate calibration of the requirements will be announced[40].

Articles 104a and 133 of the CRD are also amended to clarify that the P2R and the SyRB requirement cannot be used to cover risks that are already fully covered by the OF.

Finally, Article 131 is amended to require competent or designated authorities, as applicable, to review the calibration of the O-SII buffer requirement of an O-SII when that O-SII becomes bound by the OF, to make sure that the calibration remains appropriate.

Disclosure

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37 Instead of first setting P2R as a nominal amount, which is subsequently expressed as a percentage of TREA to fit in the overall capital stack.

38 In this context, model risk should be understood as the risk that the own funds requirement calculated using internal models would not be commensurate to the risk inherent in the exposure for which the requirement is calculated.

39 An institution becomes bound by the OF when the institution's "floored" TREA (i.e. the TREA calculated by taking into account the OF) is higher than its "un-floored" TREA (i.e. the TREA calculated by not taking into account the OF). For further details on the functioning of the OF, please see the explanatory memorandum of the Regulation amending the CRR.

40 In the case of the P2R, the announcement will take the form of a letter from the competent authority to the supervised institution containing the results of the SREP and the institution's new P2R (of course, in case no double-counting will be identified, the P2R will remain unchanged). In the case of the P2R, the announcement will take the form of a new decision by the competent or designated authority, as applicable, on the appropriate calibration of the SyRB rate or rates.

Article 106 is amended to allow Member States to grant supervisors the power to require institutions to submit information to the EBA within a deadline. This follows the changes made to Articles 433 and 434 of the CRR, which require EBA to centralise the publication of institutions' disclosures. In addition, the proposal enables supervisors to allow institutions to use specific media and locations for publications other than the EBA website. This is in line with the proposed change to the CRR according to which, in addition to the centralised EBA's publication, institutions remain free to publish their own disclosures via other means.

Supervisory benchmarking of approaches for calculating own funds requirements

Article 78 is amended to add two types of approaches to calculate own funds requirements to the approaches included in the scope of the supervisory benchmarking, namely:

(a) modelling approaches used to calculate expected credit risk losses both under International Financial Reporting Standard (IFRS) 9 and under national accounting standards; and

(b) the alternative standardised approach for market risk set out in Part Three, Title IV, Chapter 1a of the CRR given that institutions can model certain parameters under that approach.

Since the approaches used to calculate expected credit risk losses can also be used by institutions using the standardised approach for credit risk set out in Part Three, Title II, Chapter 2 of the CRR, those institutions are also included in the scope of the supervisory benchmarking exercise. However, the EBA is required to decide which of those institutions must be included, taking into account the principle of proportionality.

Article 78 is also amended to allow for the possibility of reducing the frequency of the benchmarking exercises from annual to biennial in recognition of the fact that after a certain number of exercises are been carried out, a lower frequency is likely to be sufficient to monitor the outcomes of institutions' approaches. This will also reduce the administrative burden for institutions using the benchmarked approaches.

2021/0341 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks, and amending Directive 2014/59/EU

(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 53(1) 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[41],

Having regard to the opinion of the European Economic and Social Committee[42],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Competent authorities, their staff and members of their governance bodies should be independent of political and economic influence. Risks of conflicts of interest undermine the integrity of the Union financial system and harm the goal of an integrated banking and capital markets union. Directive 2013/36/EU should provide more detailed provisions for Member States to ensure that the competent authorities, including their staff and management, act independently and objectively. In this context, minimum requirements should be laid down to prevent conflicts of interests. The European Banking Authority (EBA) should issue guidelines addressed to competent authorities on the prevention of conflicts of interests, based on international best practices.

(2) Competent authorities should have the necessary power to withdraw the authorisation granted to a credit institution where such a credit institution has been declared failing or likely to fail and, at the same time, has not met the other conditions for resolution set out by Directive 2014/59/EU of the European Parliament and of the Council[43] or

[41] OJ C , , p. .

[42] OJ C , , p. .

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

by Regulation (EU) No 806/2014 of the European Parliament and of the Council[44]. In such a situation, a credit institution should be wound up in accordance with the applicable national insolvency proceedings, or in other types of proceedings laid down for those institutions under national law, and should therefore discontinue the activities for which the authorisation had been granted.

(3) The provision of banking services in the Union is conditional upon the credit institution's having previous authorisation and a physical presence through a legal person or a branch in its territory. Only in that way credit institutions may be subject to effective prudential regulation and supervision that are necessary to minimise the risk of failure and, when it occurs, to manage that failure in order to prevent it from spreading in a disorderly manner and leading to the collapse of the financial system (contagion risk by e.g. a bank run or a bank failure triggered by imprudent lending). The provision of banking services in the Union without such physical presence would increase the presence and prevalence in the financial markets where credit institutions are closely involved of risk segments not subject to Union's prudential regulation and supervision, that may eventually threaten the financial stability of the Union or of its individual Member States. The financial crisis of 2008-2009 is the latest historical precedent, which underlines how small market segments may become the source of significant threats to the financial stability of the Union and its Member States if left outside the scope of prudential regulation and supervision. Hence, it is necessary to lay down an explicit requirement in Union law that undertakings established in a third country and seeking to provide banking services in the Union should at least establish a branch in a Member State and that such branch be authorised in accordance with Union legislation, unless the undertaking wishes to provide banking services in the Union through a subsidiary. However, that requirement to establish a branch should not apply to cases of reverse solicitation of services, as in this case it is the customer that approaches the undertaking in the third country to solicit the provision of the service.

(4) Supervisors of credit institutions should have all the necessary powers that enable them to perform their duties and that cover the various operations conducted by the supervised entities. To that end and to increase the level playing field, supervisors must have at their disposal all the supervisory powers enabling them to cover material operations that can be undertaken by the supervised entities. The European Central Bank and national competent authorities should therefore be notified in case a material operation, including acquisitions by supervised entities of material holdings in financial or non-financial entities, material transfers of assets and liabilities from or to a supervised entities, and mergers and divisions involving a supervised entities, undertaken by a supervised entity raises concerns over its prudential profile, or over possible money laundering and terrorist financing activities. Furthermore, the ECB and national competent authorities should have the power to intervene in such cases.

(5) Concerning mergers and divisions, the Directive (EU) 2017/1132 lays down harmonised rules and procedures, in particular for cross-border mergers and divisions of limited liability companies. Therefore, the assessment procedure by the competent authorities stipulated in this directive should be complementary to the Directive (EU)

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

2017/1132 and should not contradict any of its provisions. In case of those cross-border mergers and divisions which fall under the scope of Directive 2017/1132, the motivated opinion issued by the competent supervisory authority should be part of the assessment of the compliance with all relevant conditions and the proper completion of all procedures and formalities required for the pre-merger or pre-division certificate. The motivated opinion should therefore be transferred to the designated national authority responsible for issuing the pre-merger or pre-division certificate under Directive 2017/1132.

(6) In order to ensure that competent authorities can intervene before one of these material operations is undertaken, they should be notified *ex ante*. That notification should be accompanied by information necessary for the competent authorities to assess the planned operation from a prudential and anti-money laundering and counter-terrorist financing perspective. That assessment by competent authorities should commence at the moment of the receipt of the notification including all the requested information and, in the case of the acquisition of a material holding or the material transfer of assets and liabilities, should be limited in time.

(7) In the case of the acquisition of a qualifying holding, or the material transfer of assets or liabilities, the conclusion of the assessment could lead the competent authority to decide to oppose to the operation. In the absence of opposition from the competent authorities within a given period, the operation should be deemed approved.

(8) In order to ensure proportionality and avoid undue administrative burden, those additional powers of competent authorities should be applicable only to operations deemed material. Only operations consisting in mergers or divisions should be treated automatically as material operations, as the newly created entity can be expected to present a significantly different prudential profile from the entities initially involved in the merger or division. Also, mergers or division should not be concluded by entities undertaking them before a prior positive opinion is received from the competent authorities. Other operations (including acquisition of holding and transfers of assets and liabilities), when considered material, should be assessed by the competent authorities based on a tacit approval procedure.

(9) In some situations (for instance when entities established in various Member States are involved), operations might require multiple notifications and assessments from different competent authorities, requiring an efficient cooperation among those authorities. It is therefore necessary to precise cooperation obligations, in particular early cross notifications, smooth exchange of information and coordination in the assessment.

(10) It is necessary to align provisions related to the acquisition of a qualifying holding in a credit institution with provisions on the acquisition of a qualifying holding by an institution, in case both assessments have to be undertaken for the same operation. Indeed, without proper articulation these provisions could lead to inconsistencies in the assessment undertaken by competent authorities, and ultimately the decisions taken by them. It is therefore necessary to provide for similar additional time provided to competent authorities to acknowledge receipt of the notification when the operation is considered complex).

(11) EBA should be mandated to develop regulatory technical standards and implementing technical standards to ensure an appropriate framing of the use of those additional supervisory powers. Those regulatory technical standards and implementing technical standards should, in particular, specify the information to be received by the

competent authorities, the elements to be assessed, and cooperation when more than one competent authorities are involved. Those various elements are crucial to ensure that a sufficiently harmonised supervisory methodology allows provisions on the additional powers to be implemented efficiently, with the minimum possible additional administrative burden.

(12) It is crucial that credit institutions, financial holding companies and mixed financial holding companies comply with the prudential requirements to ensure their safety and soundness and preserve the stability of the financial system, both at the level of the Union as a whole and in each Member State. Therefore, the ECB and national competent authorities should have the power to take timely and decisive measures where those credit institutions, financial holding companies and mixed financial holding companies and their effective managers fail to comply with the prudential requirements or supervisory decisions.

(13) To ensure a level playing field in the area of sanctioning powers, Member States should be required to provide for effective, proportionate and dissuasive administrative penalties, periodic penalty payments and other administrative measures in relation to breaches of national provisions transposing this Directive and breaches of Regulation (EU) No 575/2013 of the European Parliament and of the Council[45]. In particular, Member States can impose administrative penalties where the relevant breach is also subject to national criminal law. Those administrative penalties, periodic penalty payments and other administrative measures should meet certain minimum requirements, including the minimum powers that should be vested on competent authorities to be able to impose them, the criteria that competent authorities should take into account in their application, publication requirements or the levels of administrative penalties and periodic penalty payments. Member States should lay down specific rules and effective mechanisms regarding the application of periodic penalty payments.

(14) Administrative pecuniary penalties should have a deterrent effect in order to prevent the natural or legal person in breach of national provisions transposing Directive 2013/36/EU or in breach of Regulation (EU) No 575/2013 from engaging in the same or similar conduct in the future. Member States should be required to provide for administrative penalties, which are effective, proportionate and dissuasive. Furthermore, competent authorities should have regard to any previous criminal penalties that may have been imposed on the same natural or legal person responsible for the same breach when determining the type of administrative penalties or other administrative measures and the level of administrative pecuniary penalties. This is to ensure that the severity of all the penalties and other administrative measures imposed for punitive purposes in case of accumulation of administrative and criminal proceedings is limited to what is necessary in the view of the seriousness of the breach concerned. To that end, it is essential to enhance the cooperation between competent authorities and judicial authorities in the case of accumulation of administrative and criminal proceedings against the same persons responsible for the same breach. Member States should lay down specific rules and mechanisms to facilitate such cooperation.

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[45] 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).*

(15) Competent authorities should be able to impose administrative penalties on the same natural or legal person responsible for the same acts or omissions. However, such accumulation of proceedings and penalties on the same breach should pursue different objectives of general interest. Member States should lay down rules to provide for an appropriate coordination between administrative and criminal proceedings. Such rules should limit the imposition of accumulative penalties in relation to the same breach on the natural or legal person concerned to the strictly necessary in order to meet those different objectives. Furthermore, Member States should lay down rules to ensure that the severity of all the administrative and criminal penalties and other measures imposed in cases of accumulation of proceedings are limited to what is necessary in view of the seriousness of the breach concerned. Member States should also ensure that such duplication of proceedings and subsequent penalties comply with the *ne bis in idem* principle and that the rights of the natural or legal person concerned are duly protected.

(16) Administrative pecuniary penalties on legal persons should be applied consistently, in particular as regards the determination of the maximum amount of administrative penalties, which should take into account the total annual net turnover of the relevant undertaking. However, the current definition of the total annual net turnover in Directive 2013/36/EU is neither exhaustive enough nor sufficiently clear and complete to ensure a level playing field in the application of administrative pecuniary penalties. Therefore, it is necessary to clarify several elements of the current definition of total annual net turnover in order to avoid an inconsistent interpretation.

(17) In addition to administrative penalties, competent authorities should be empowered to impose periodic penalty payments on credit institutions, financial holding companies, mixed financial holding companies and their effective managers for failure to comply with their obligations under Directive 2013/36/EU, Regulation (EU) No 575/2013 or a decision issued by a competent authority. Those enforcement measures should be imposed where a breach of a requirement or supervisory decision of the competent authority is continuing. Competent authorities should be able to impose those enforcement measures without having to address a prior request, order or warning to the party in breach. Since the purpose of the periodic penalty payments is to compel natural or legal persons to terminate an ongoing breach, the application of periodic penalty payments should not prevent competent authorities from imposing subsequent administrative penalties for the same breach.

(18) It is necessary to lay down administrative penalties, periodic penalty payments and other administrative measures in order to ensure the greatest possible scope for action following a breach and to help prevent further breaches, irrespective of their qualification as an administrative penalty or other administrative measure under national law. Member States should therefore be able to provide for additional penalties and higher level of administrative pecuniary penalties.

(19) Competent authorities should impose periodic penalty payments that are proportionate and effective. Accordingly, the competent authority should take into account the potential impact of the periodic penalty payment on the financial situation of the legal or natural person in breach, and seek to avoid that the penalty would cause the legal or natural person in breach to become insolvent, lead it to serious financial distress or represent a disproportionate percentage of its total annual turnover.

(20) Where the legal system of the Member State does not allow the administrative penalties provided for in this Directive, the rules on administrative penalties may be

applied in such a manner that the penalty is initiated by the competent authority and imposed by judicial authorities. Therefore, it is necessary that those Member States ensure that the application of the rules and penalties has an effect equivalent to the administrative penalties imposed by the competent authorities. When imposing such penalties, judicial authorities should take into account the recommendation by the competent authority initiating the penalty. The penalties imposed should be effective, proportionate and dissuasive.

(21) In order to provide for appropriate sanctions for breaches of national provisions transposing Directive 2013/36/EU and Regulation (EU) No 575/2013, the list of breaches subject to administrative penalties, periodic penalty payments and other administrative measures should be supplemented. Therefore, the list of breaches under Article 67 of Directive 2013/36/EU should be amended.

(22) The regulation of branches established by undertakings in a third country to provide banking services in a Member State is subject to national law and only harmonised to a very limited extent by Directive 2013/36/EU. While third country branches have a significant presence in Union banking markets, they are currently subject only to very high level information requirements, but not to any Union-level prudential standards or supervisory cooperation arrangements. The complete absence of a common prudential framework leads to third country branches' being subject to disparate national requirements of varying level of prudence and reach. Furthermore, competent authorities lack comprehensive information and the necessary supervisory tools to properly monitor the specific risks created by third country groups operating in one or various Member States through both branches and subsidiaries There are currently no integrated supervisory arrangements in relation to them and the competent authority responsible for the supervision of each branch of a third country group is not obliged to exchanging information with the competent authorities supervising the other branches and subsidiaries of the same group. Such fragmented regulatory landscape creates risks to the financial stability and market integrity of the Union which should be properly addressed through a harmonised framework on third country branches. Such a framework should comprise minimum common requirements on authorisation, prudential standards, internal governance, supervision and reporting. This set of requirements should build on those that Member States already apply to third countries branches in their territories and should take into account similar or equivalent requirements that third countries apply to foreign branches, with the aim of ensuring consistency between Member States and aligning the Union third country branches framework with the prevailing international practices in this field.

(23) For reasons of proportionality, the requirements on third country branches should be catered relative to the risk that they pose to the financial stability and market integrity of the Union and the Member States. Third country branches should, therefore, be categorised as either class 1, where they are deemed riskier, or, otherwise, as class 2, where they are small and non-complex and do not pose a significant financial stability risk (consistently with the definition of "small and non-complex institution" in Regulation (EU) No 575/2013). Accordingly, third country branches with booked assets in the Member State in an amount equal to or in excess of EUR 5 000 000 000 should be regarded as posing such a greater risk due to their larger size and complexity, because their failure could lead to a significant disruption of the Member State's market for banking services or of its banking system. Third country branches authorised to accept retail deposits should also be regarded similarly as riskier regardless of their size, insofar as their failure would affect highly vulnerable

depositors and could lead to a loss of confidence in the safety and soundness of the Member State's banking system to protect citizens' savings. Both of those types of third country branches should, therefore, be categorised as class 1.

(24) Third country branches should also be classified as class 1 where the undertaking in the third country that is their head office (the "head undertaking") is subject to regulation, oversight and implementation of such regulation that are not determined to be at least equivalent to Directive 2013/36/EU and Regulation (EU) No 575/2013 or where the relevant third country is listed as a high-risk third country that has strategic deficiencies in its regime on anti-money laundering and counter terrorist financing in accordance with Directive (EU) 2015/849 of the European Parliament and of the Council[46]. Those third country branches pose a significant risk to the financial stability of the Union and of the Member State of establishment because the banking regulatory or anti-money laundering frameworks that apply to their head undertaking fail to adequately capture or permit a proper monitoring of the specific risks that arise from the activities conducted by the branch in the Member State or of the risks to counterparties in the Member State that arise from the third country group. For the purposes of determining the equivalence of the third country's banking prudential and supervisory standards to the Union's standards, the Commission should be able to instruct EBA to conduct an assessment in accordance with Article 33 of Regulation (EU) No 575/2013. EBA should ensure that the assessment is conducted in a rigorous and transparent manner and in accordance with a sound methodology. Furthermore, EBA should also consult and cooperate closely with the third countries' supervisory authorities and government departments in charge of banking regulation and, where appropriate, private sector parties, endeavouring to treat those parties fairly and to give them the opportunity to submit documentation and make representations within reasonable timeframes. Furthermore, EBA should ensure that the report issued in accordance with Article 33 of Regulation (EU) No 575/2013 is adequately reasoned, sets out a detailed description of the assessed matters and is delivered within a reasonable timeframe.

(25) Competent authorities should have an explicit power to require on a case-by-case basis that third country branches apply for authorisation in accordance with Title III, Chapter 1 of Directive 2013/36/EU, at a minimum where those branches engage in activities with counterparts in other Member States in contravention of the internal market rules or where they pose a significant risk to the financial stability of the Union or of the Member State where they are established. Moreover, competent authorities should be required to periodically assess whether third country branches holding assets on their books in an amount equal to or higher than EUR 30 000 000 000 have systemic importance. All the third country branches that belong to the same third country group established in one Member State or across the Union should be jointly subject to such periodic assessment. That assessment should examine, in accordance with specific criteria, whether those branches pose an analogous level of risk to the financial stability of the Union or its Member States as institutions defined as "systemically important" under Directive 2013/36/EU and Regulation EU No

46 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

575/2013. Where competent authorities conclude that the third country branches are systemically important, they should impose requirements on those branches that are appropriate to mitigate the risks to financial stability. For those purposes, competent authorities should be able to require the third country branches to apply for authoritisation as subsidiary institutions under Directive 2013/36/EU in order to continue conducting banking activities in the Member State or across the Union. Moreover, competent authorities should be able to impose other requirements, in particular an obligation to restructure the third country branches' assets or activities in the Union so that those branches stop being systemic, or a requirement to comply with additional capital, liquidity, reporting or disclosure requirements, where that would be sufficient to address the risks to financial stability. Competent authorities should have the possibility not to impose any of those requirements on third country branches assessed as systemic only where the competent authorities can justify that the risks that those branches pose to the financial stability and market integrity of the Union and the Member States would not significantly increase in the absence of such requirements for a period not exceeding one year.

(26) To ensure the consistency of supervisory decisions on a third country group with branches and subsidiaries across the Union, a lead competent authority should be designated to conduct the assessment of systemic importance. That role should correspond to the consolidated supervisor of the third country group in the Union, where Article 111 of Directive 2013/36/EU applies, or to the competent authority that would become the consolidated supervisor in accordance with that Article, should the third country branches of that group be treated as its subsidiaries. Where the relevant consolidated supervisor has not been determined or where the lead competent authority has not started the assessment of systemic importance within three months. EBA should, instead, perform that assessment. The lead competent authority, or, where applicable, EBA, should consult and cooperate fully with the competent authorities responsible for supervising the relevant third country group's subsidiaries and branches across the Union. The lead competent authority and those competent authorities should take a joint decision on whether to impose requirements on the third country branches assessed as systemic. For reasons of due process, the lead competent authority or, where applicable, EBA should ensure that the third country branches' right to be heard and to make representations are respected during the assessment of systemic importance.

(27) Competent authorities should conduct regular reviews of third country branches' compliance with relevant requirements under Directive 2013/36/EU, and take supervisory measures on those branches to ensure or restore compliance with those requirements. To facilitate the effective supervision of the requirements on third country branches and allow for a comprehensive overview of third country groups' activities within the Union, common supervisory and financial reporting should be made available to competent authorities in accordance with standardised templates. EBA should be mandated to develop draft implementing technical standards setting out those templates and the Commission should be empowered to adopt those draft implementing technical standards. Furthermore, it is necessary to implement appropriate cooperation arrangements between competent authorities to ensure that all the activities of third country groups operating in the Union through third country branches are subject to comprehensive supervision, to prevent the requirements applicable to those groups under Union law from being circumvented and to minimise the potential risks to the financial stability of the Union. In particular, class 1 third country branches should be included within the scope of the colleges of supervisors of

third country groups in the Union. Where such a college does not exist already, competent authorities should set up an *ad hoc* college for all class 1 third country branches of the same group where it operates in more than one Member State.

(28) The Union's third country branches framework should be applied without prejudice to the discretion that Member States may currently have to require on a general basis that third country undertakings from certain third countries conduct banking activities in their territory solely through subsidiary institutions authorised in accordance with Title III, Chapter 1 of Directive 2013/36/EU. That requirement may refer to third countries that apply banking prudential and supervisory standards that are not equivalent to the standards under the Member State's national law or to third countries that have strategic deficiencies in its regime on anti-money laundering and counter terrorist financing.

(29) Following the introduction of IFRS 9 on 1 January 2018, the outcome of the expected credit losses calculations, which is based on a modelling approaches, directly affects the amount of own funds and the regulatory ratios of institutions. The same modelling approaches are also the basis for the expected credit losses calculation where institutions apply national accounting frameworks. As a result, it is important that competent authorities and EBA have a clear view of the impact that those calculations have on the range of values for risk-weighted assets and own funds requirements that arise for similar exposures. To that end, the benchmarking exercise should cover also those modelling approaches. Given that institutions calculating capital requirements in accordance with the standardised approach for credit risk may also use models for the calculation of expected credit losses within the IFRS 9 framework, those institutions should also be included in the benchmarking exercise, taking into account the principle of proportionality.

(30) Regulation (EU) 2019/876[47] amended Regulation (EU) No 575/2013 by introducing a revised market risk framework developed by the Basel Committee for Banking Supervision. The alternative standardised approach that is part of that new framework allows institutions to model certain parameters used in the calculation of risk-weighted assets and own funds requirements for market risk. It is therefore important that competent authorities and EBA have a clear view of the range of values for risk-weighted assets and own funds requirements that arise for similar exposures not only under the alternative internal model approach, but also under the alternative standardised approach. As a result, the market risk benchmarking exercise should cover the revised standardised and internal model approaches.

(31) The global transition towards a sustainable economy as enshrined in the Paris Agreement[48], as concluded by the Union, and the United Nations 2030 Agenda for Sustainable Development will require a profound socio-economic transformation and will depend on the mobilisation of significant financial resources from the public and

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[47] 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).

[48] Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282, 19.10.2016, p. 4).

private sectors. The European Green Deal[49] commits the Union to becoming climate-neutral by 2050. The financial system has a relevant role to play in supporting that transition, which relates not only to capturing and supporting the opportunities that will arise but also to properly managing the risks that it may entail.

(32) The unprecedented scale of transition towards a sustainable, climate-neutral and circular economy will have considerable impacts on the financial system. In 2018, the Network of Central Banks and Supervisors for Greening the Financial System[50] acknowledged that climate-related risks are a source of financial risk. The Commission's Renewed Sustainable Finance Strategy[51] emphasises that environmental, social and governance (ESG) risks, and risks steaming from the physical impact of climate change, biodiversity loss and the broader environmental degradation of ecosystems in particular, pose an unprecedented challenge to our economies and to the stability of the financial system. Those risks present specificities such as their forward-looking nature and their distinctive impacts over short, medium and long-term time horizons.

(33) The long-term nature and the profoundness of the transition towards a sustainable, climate-neutral and circular economy will entail significant changes in the business models of institutions. The adequate adjustment of the financial sector, and of credit institutions in particular, is necessary to achieve the objective of net-zero greenhouse gas emissions in the Union's economy by 2050, while maintaining the inherent risks under control. Competent authorities should, therefore, be enabled to assess this process and intervene in cases where institutions' manage climate risks, as well as risks stemming from environmental degradation and biodiversity loss, in a way that endangers the stability of the individual institutions, or the financial stability overall. Competent authorities should also monitor and be empowered to act, when there is a misalignment of institutions' business models and strategies with the relevant Union policy objectives and broader transition trends towards a sustainable economy, resulting in risks to their business models and strategies, or to the financial stability. Climate and, more broadly, environmental risks, should be considered together with social risks and governance risks under one category of risks to enable a comprehensive and coordinated integration of these factors, as they are often intertwined. ESG risks are closely linked with the concept of sustainability, as ESG factors represent the main three pillars of sustainability.

(34) To maintain adequate resilience to the negative impacts of ESG factors, institutions established in the Union need to be able to systematically identify, measure and manage ESG risks, and their supervisors need to assess the risks at the level of the individual institution as well as at the systemic level, giving priority to environmental factors and progressing to the other sustainability factors as the methodologies and tools for the assessment evolve. Institutions should assess the alignment of their portfolios with the ambition of the Union to become climate-neutral by 2050 as well as avert environmental degradation and biodiversity loss. Institutions should set out specific plans to address the risks arising, in the short, medium and long term, from the

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[49] COM(2019) 640 final.

[50] Launched at the Paris One Planet Summit on 12 December 2017, is a group of Central Banks and Supervisors willing, on a voluntary basis, to share best practices and contribute to the development of environment and climate risk management in the financial sector and to mobilise mainstream finance to support the transition toward a sustainable economy.

[51] COM(2021) 390 final, 06.07.2021.

misalignment of their business model and strategy with relevant policy objectives of the Union, included in the Paris Agreement, the Fit for 55 package[52] [and the post-2020 Global Biodiversity Framework]. Institutions should be required to have robust governance arrangements and internal processes for the management of ESG risks and to have in place strategies approved by their management bodies that take into consideration not only the current but also the forward-looking impact of ESG factors. The collective knowledge and awareness of ESG factors by the management body and institutions' internal capital allocation to address ESG risks will also be key to drive the change within each and single institution. The specificities of ESG risks as well as their relative novelty means that understandings, measurements and management practices can differ significantly across institutions. To ensure convergence across the Union and a uniform understanding of ESG risks, appropriate definitions and minimum standards for the assessment of those risks should be provided in prudential regulation. To achieve this objective, definitions are laid down in Regulation (EU) No 575/2013 and the EBA is empowered to specify a minimum set of reference methodologies for the assessment of the impact of ESG risks on the financial stability of institutions, giving priority to the impact of environmental factors. Since the forward-looking nature of ESG risks means that scenario analysis and stress testing, together with plans for addressing those risks, are particularly informative assessment tools, EBA should be also empowered to develop uniform criteria for the content of the plans to address those risks and for the setting of scenarios and applying the stress testing methods. Environment-related risks, including risks stemming from environmental degradation and biodiversity loss, and climate-related risks in particular should take priority in light of their urgency and the particular relevance of scenario analysis and stress testing for their assessment.

(35) ESG risks can have far-reaching implications for the stability of both individual institutions and the financial system as whole. Hence, competent authorities should consistently factor those risks into their relevant supervisory activities, including the supervisory evaluation and review process and the stress testing of those risks. The European Commission, via its Technical Support Instrument, has been providing support to national competent authorities in developing and implementing stress testing methodologies and stands ready to continue to provide technical support in this respect. However, the stress testing methodologies for ESG risks have so far mainly been applied in an exploratory manner. To firmly and consistently embed stress testing of ESG in supervision, the EBA, European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) should jointly develop guidelines to ensure consistent considerations and common methodologies for stress testing ESG risks. Stress testing of those risks should start with climate and environment-related factors, and as more ESG risk data and methodologies become available to support the development of additional tools to assess their quantitative impact on financial risks, competent authorities should increasingly assess the impact of those risks in their adequacy assessments of credit institutions. In order to ensure convergence of supervisory practices, EBA should issue guidelines regarding the uniform inclusion of ESG risks in the supervisory review and evaluation process (SREP).

[52] Communication of the Commission COM(2021)568 final, 14.07.2021, comprising the following Commission proposals: COM(2021)562 final, COM(2021)561 final, COM(2021)564 final, COM(2021)563 final, COM(2021)556 final, COM(2021)559 final, COM(2021)558 final, COM(2021)557 final, COM(2021)554 final, COM(2021)555 final, COM(2021)552 final.

(36) The provisions in Article 133 of Directive 2013/36/EU on the systemic risk buffer framework may already be used to address various kinds of systemic risks, including risks related to climate change. To the extent that the relevant competent or designated authorities, as applicable, consider that risks related to climate change have the potential to have serious negative consequences for the financial system and the real economy in Member States, they should introduce a systemic risk buffer rate for those risks where they consider the introduction of such rate effective and proportionate to mitigate those risks.

(37) Members of the management body may undergo the suitability assessment only after a significant time after their appointment or, in the case of key function holders, not at all. Thus, members of the management body who do not meet the suitability criteria may have exercised their duties for a long time, which is problematic especially for large institutions. Moreover, cross-border institutions must navigate through a wide diversity of national rules and processes, which does not make the current system efficient. The existence of different requirements as regards the suitability assessment across the Union is a particularly acute issue in the context of the Banking Union. As a result, it is important to provide a set of rules at Union level to put in place a consistent and predictable "fit-and-proper" framework. This will foster supervisory convergence, enabling further trust between competent authorities and give more legal certainty to institutions. Having a robust "fit-and-proper" framework for assessing the suitability of members of the management body and key function holders is a crucial factor to ensure that institutions are adequately run and their risks appropriately managed.

(38) The purpose of assessing the suitability of members of management bodies is to ensure that those members are qualified for their role and are of good repute. Having the primary responsibility for assessing the suitability of each member of the management body, institutions should carry out the suitability assessment, followed by a verification by the competent authorities that may perform it before or after the member of the management body takes up the position. However, due to the risks posed by large institutions resulting in particular from potential contagion effects, unsuitable members of management body should be prevented from influencing the running of such large institutions with potential serious detrimental effects. It is therefore appropriate that, safe in exceptional circumstances, the competent authorities assess the suitability of members of the management body of large institutions before those members exercise their duties.

(39) Not only members of the management body, but also key function holders have a significant influence in ensuring the sound and prudent management of an institution on a day-to-day basis. Because Directive 2013/36/EU does not currently define key function holders, Member States have diverging practices across the Union, which impedes an effective and efficient supervision and prevents a level playing field. It is therefore necessary to define key function holders. In addition, the responsibility for assessing the suitability of key function holders should primarily belong to institutions. However, due to the risks posed by the activities of large institutions, the suitability of the heads of internal control functions and the chief financial officer in such large institutions should be assessed by competent authorities before those persons take up their positions.

(40) In order to ensure legal certainty and predictability for the institutions, it is necessary to establish an efficient and timely process for verifying the suitability of members of the management body and key function holders by competent authorities. Such process should enable competent authorities to request any additional information

where necessary, but also ensure that those competent authorities are able to handle the suitability assessments within the prescribed timeframe. Institutions, from their side, should provide the competent authorities with correct and complete information within the allocated time and respond quickly and in good faith to requests for additional information from the competent authorities.

(41) In light of the role of the suitability assessment for the prudent and sound management of institutions, it is necessary to provide competent authorities with new tools, such as statements of responsibilities and a mapping of duties, to assess the suitability of members of the management body and key function holders. Those new tools will also support the work of competent authorities when reviewing the governance arrangements of institutions as part of the supervisory review and evaluation process. Notwithstanding the overall responsibility of the management body as a collegial body, institutions should be required to draw up individual statements and a mapping that clarify the duties held by members of the management body, senior management and key function holders. Their individual duties are not always clearly or consistently laid down and there may be situations where two or more roles overlap or where areas of duties are overlooked because they do not fall neatly under the remit of a single person. The scope of each individual's duties should be well defined and no areas of duties should be left without ownership. Those tools should ensure further accountability of the members of the management body, senior management and key function holders.

(42) In order to safeguard financial stability, competent authorities should be able to take and implement decisions swiftly. In the context of early intervention measures or resolution action, competent authorities and resolution authorities may consider it appropriate to remove or replace members of the management body or senior management. To take into account such situations, competent authorities should perform the suitability assessment of members of the management body or key function holders after those members of the management body or key function holders have taken up their position.

(43) Upon becoming bound by the output floor laid down in Regulation (EU) No 575/2013, the nominal amount of an institution's additional own funds requirement set by the institution's competent authority in accordance with Article 104(1), point (a), of Directive 2013/36/EU to address risks other than the risk of excessive leverage should not immediately increase as a result, all else being equal. Furthermore, in such case, the competent authority should review the institution's additional own funds requirement and assess, in particular, whether and to what extent such requirement captures model risk from the use of internal models by the institution. Where that is the case, the institution's additional own funds requirement should be regarded as overlapping with the risks captured by the output floor in the own funds requirement of the institution and, consequently, the competent authority should reduce that requirement to the extent necessary to remove any such overlap for as long as the institution remains bound by the output floor.

(44) Similarly, upon becoming bound by the output floor, the nominal amount of an institution's CET1 capital required under the systemic risk buffer should not increase where there has been no increase in the macroprudential or systemic risks associated with the institution. In such cases, the institution's competent or designated authority, as applicable, should review the calibration of the systemic risk buffer rates and make sure that they remain appropriate and do not double-count the risks that are already covered by virtue of the fact that the institution is bound by the output floor. More in

general, competent and designated authorities, as applicable, should not impose systemic risk buffer requirements for risks which are already fully covered by the output floor.

(45) Furthermore, when an institution designated as an ‘other systemically important institution’ becomes bound by the output floor, its competent or designated authority, as applicable, should review the calibration of the institution’s O-SII buffer requirement and make sure that it remains appropriate.

(46) To enable the timely and effective activation of the systemic risk buffer it is necessary to clarify the application of the relevant provisions and simplify and align the applicable procedures. Setting a systemic risk buffer should be possible for designated authorities in all Member States to enable the recognition of systemic risk buffer rates set by authorities in other Member States and to ensure that authorities are empowered to address systemic risks in a timely and effective manner. Recognition of a systemic risk buffer rate set by another Member State should require only a notification from the authority recognising the rate. To avoid unnecessary authorisation procedures where the decision to set a buffer rate results in a decrease or no change from any of the previously set rates, the procedure laid down in Article 131(15) of Directive 2013/36/EU needs to be aligned with the procedure laid down in Article 133(9) of that Directive. The procedures laid down in Article 133(11) of that Directive should be clarified and made more consistent with the procedures applying for other systemic risk buffer rates, where relevant.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2013/36/EU

Directive 2013/36/EU is amended as follows:

(1) in Article 3, paragraph 1 is amended as follows:

(a) the following point (8a) is inserted:

‘(8a) ‘management body in its management function’ means the management body acting in its role of directing effectively the institution and includes the persons who direct the business of the institution;’;

(b) point (9) is replaced by the following:

‘(9) ‘senior management’ means those natural persons who exercise executive functions within an institution and are directly accountable to the institution’s management body but are not members of that body, and who are responsible for the day-to-day management of the institution under the direction of the management body of the institution;’;

(c) the following points (9a) to (9d) are inserted:

‘(9a) ‘key function holders’ means persons who have significant influence over the direction of the institution but are not members of the management body, including the heads of internal control functions and the chief financial officer, where those heads or that officer are not members of the management body;

(9b) ‘chief financial officer’ means the person responsible for the financial resources management, financial planning and financial reporting of the institution;

(9c) ‘heads of internal control functions’ means the persons at the highest hierarchical level responsible for effectively managing the day-to-day operation of the independent risk management, compliance and internal audit functions of the institution;

(9d) ‘internal control functions’ means risk management, compliance and internal audit functions;’;

(d) point (11) is replaced by the following:

‘(11) ‘model risk’ means model risk as defined in Article 4(1), point (52b), of Regulation (EU) No 575/2013;’;

(e) the following point (29a) is inserted:

‘(29a) ‘stand-alone institution in the EU’ means stand-alone institution in the EU as defined in Article 4(1), point (33a), of Regulation (EU) No 575/2013;’;

(f) the following point (47a) is inserted:

‘(47a) ‘eligible capital’ means the eligible capital as defined in Article 4(1), point (71), of Regulation (EU) No 575/2013;’;

(g) the following points (66) to (69) are added:

‘(66) ‘large institution’ means an institution as defined in Article 4(1), point (146), of Regulation (EU) No 575/2013;

(67) ‘relevant subsidiary’ means a material subsidiary as defined in Article 4(1), point (135), of Regulation (EU) No 575/2013 or a large subsidiary as defined in Article 4(1), point (147), of that Regulation;

(68) ‘periodic penalty payments’ means daily penalties, aimed at ending ongoing breaches and compelling legal or natural person to return to compliance with their obligations under this Directive and Regulation (EU) No 575/2013;

(69) ‘environmental, social and governance risk’ means environmental, social and governance risk as defined in Article 4(1), point (52d), or Regulation (EU) No 575/2013;’;

(2) in Article 4, paragraph 4 is replaced by the following:

‘4. Member States shall ensure that competent authorities have the expertise, resources, operational capacity, powers and independence necessary to carry out the functions relating to prudential supervision, investigations and the powers to impose periodic penalty payments and penalties set out in this Directive and in Regulation (EU) No 575/2013.

For the purposes of preserving the independence of competent authorities in the exercise of their powers, Member State shall provide all the necessary arrangements to ensure that those competent authorities, including their staff and members of their governance bodies, can act independently and objectively, without seeking or taking instructions, or being subject to influence from supervised institutions, from any government of a Member State or body of the Union or from any other public or private body. These arrangements shall be without prejudice to the rights and obligations of the competent authorities as stemming from being part of the European system of financial supervision as stemming from Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010[*1], the Single Supervisory Mechanism as stemming from Council Regulation (EU) No 1024/2013 of 15 October 2013[*2] and Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014[*3], for the Single Resolution Board as stemming from stemming from Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014[*4].

Member States shall, in particular, ensure that competent authorities have in place all the necessary arrangements to prevent conflicts of interests of their staff and members of their governance bodies. For those purposes, Member States shall lay down rules proportionate to the role and responsibilities of those staff and members of the governance bodies, and at a minimum prohibiting them from:

(a) trading in financial instruments issued by or referenced to the institutions supervised by the competent authorities, their direct or indirect parent undertakings, subsidiaries or affiliates;

(b) following the end of their employment at the competent authority, being hired by or accepting any kind of contractual agreement for the provision of professional services with any of the following:

 (i) institutions they have directly supervised, including their direct or indirect parent undertakings, subsidiaries or affiliates, over at least the two preceding years from the date when taking up any new role;

 (ii) firms that provide services to any of the undertakings referred to in point (i) that were directly supervised over at least the two preceding years from the date when taking up any new role, unless they are strictly precluded from taking part in any provision of those services while the prohibition referred to herein remains in force.

Members of staff and of governance bodies subject to the prohibitions provided for in the third subparagraph, point (b), shall be entitled to an appropriate compensation for the inability to take up a prohibited role.

EBA shall issue guidelines addressed to the competent authorities, in accordance with Article 16 of Regulation (EU) No 1093/2010, on the prevention of conflicts of interests in and independence of competent authorities, taking into account international best practices, for a proportionate application of this Article.';

[*1] 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).

[*2] Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287,29.10.2013, p. 63).

[*3] Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities

and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

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

(3) In Article 18 the following point (g) is added:

‘(g) meets all of the following conditions:

(i) it has been determined to be failing or likely to fail in accordance with Article 32(1), point (a) of Directive 2014/59/EU or in accordance with Article 18(1), point (a), of Regulation (EU) No 806/2014;

(ii) the resolution authority considers that the condition in Article 32(1), point (b) of Directive 2014/59/EU or in Article 18(1), point (b), of Regulation (EU) No 806/2014 is met with respect to that credit institution;

(iii) the resolution authority considers that the condition in Article 32(1), point (c) of Directive 2014/59/EU or in Article 18(1), point (c), of Regulation (EU) No 806/2014 is not met with respect to that credit institution.’;

(4) Article 21a is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Parent financial holding companies in a Member State, parent mixed financial holding companies in a Member State, EU parent financial holding companies and EU parent mixed financial holding companies shall seek approval in accordance with this Article. Other financial holding companies or mixed financial holding companies shall seek approval in accordance with this Article where they are required to comply with this Directive or Regulation (EU) No 575/2013 on a sub-consolidated basis.

Competent authorities shall perform a review of the parent undertakings of an institution, or of the parent undertakings of an entity requesting an authorisation pursuant to Article 8, in order to detect the presence or not of an undertaking complying with the criteria to be considered as a parent financial holding company in a Member State, a parent mixed financial holding company in a Member State, an EU parent financial holding company or an EU parent mixed financial holding company.

For the purposes of the second sub-paragraph, where the parent companies are located in other Member States than the Member State in which the institution, or the entity requesting an authorisation pursuant to Article 8, is established, competent authorities of those two Member States shall cooperate closely to perform the review.

Competent authorities shall publish the outcome of the review referred to in the second sub-paragraph.’;

(b) paragraph 2 is amended as follows:

(i) in the first subparagraph, point (b) is replaced by the following:

‘(b) information regarding the nomination of at least two persons effectively directing the financial holding company or mixed financial holding company and compliance with the requirements set out in Article 91(1);’;

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

‘Where the approval of a financial holding company or mixed financial holding company takes place concurrently with the assessment referred to in Article 22 and Article 27a, the competent authority for the purposes of that Article shall coordinate, as appropriate, with the consolidating supervisor and, where different, the competent authority in the Member State where the financial holding company or mixed financial holding company is established. In that case, the assessment period referred to in Article 22(3), second subparagraph, and Article 27a(6) shall be suspended for a period exceeding 20 working day until the procedure set out in this Article is complete.’;

(5) in Article 21b(6), the following second and third subparagraphs are added:

‘EBA shall develop draft implementing technical standards to specify the uniform formats, definitions and the IT solutions to be applied in the Union for the reporting of the information referred to in the first subparagraph.

EBA shall submit those draft implementing technical standards to the Commission by [OP please insert the date = 12 months from date of entry into force of this amending Directive].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the second subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.’;

(6) the following new Article 21c is inserted:

Article 21c

Requirement to establish a branch for the provision of banking services by third country undertakings and exception for the reverse solicitation of services

1. Member States shall require undertakings established in a third country as referred to in Article 47(1) and (2) to establish a branch in their territory and apply for authorisation in accordance with Title VI to commence or continue conducting the activities referred to in paragraph (1) of that Article in the relevant Member State.

2. Where a retail client, an eligible counterparty or a professional client within the meaning of Sections I and II of Annex II to Directive 2014/65/EU established or situated in the Union approaches an undertaking established in a third country at its own exclusive initiative for the provision of any service or activity referred to in Article 47(1), the requirement laid down in paragraph 1 of this Article shall not apply to the provision to that person of the relevant service or activity, including a relationship specifically related to the provision of that service or activity. Without prejudice to intragroup relationships, where a third country undertaking, including through an entity acting on its behalf or having close links with such third-country undertaking or any other person acting on behalf of such undertaking, solicits clients

or potential clients in the Union, it shall not be deemed to be a service provided at the own exclusive initiative of the client.

3. An initiative by a client or counterparty as referred to in paragraph 2 shall not entitle the third-country undertaking to market other categories of products, activities or services than those that the client or counterparty had solicited, other than through a third country branch established in a Member State.';

(7) In Title III, the following Chapters 3, 4 and 5 are added:

'CHAPTER 3

Acquisition or divesture of a qualifying holding

Article 27a

Notification and assessment of the acquisition

1. Member States shall require any institution, parent financial holding companies in a Member State, parent mixed financial holding companies in a Member State, EU parent financial holding companies and EU parent mixed financial holding companies, or other financial holding companies or mixed financial holding companies required to seek for approval in accordance with Article 21a(1) on a sub-consolidated basis (the "acquirer") to notify their competent authority where they intend to acquire, directly or indirectly, a qualifying holding which exceeds 15% of the eligible capital of the acquirer (the "proposed acquisition"), indicating the size of the intended holding and the relevant information, as specified in Article 27b(5).

2. The competent authorities shall acknowledge receipt of the notification under paragraph 1 or of any additional information under paragraph 5 promptly and in any event within two working days following receipt of that notification.

By way of derogation from the paragraph 2 of this Article, and of Article 22(2), when the proposed acquisition referred to in paragraph 1 of this Article or in Article 22(1) is deemed complex by the competent authorities, acknowledgment of the receipt of the notification of any additional information shall be done promptly and in any event within ten working days following the receipt of that notification.

3. The competent authorities shall have 60 working days from the date of the written acknowledgement of receipt of the notification and from the receipt of all documents, including those required by the Member State to be attached to the notification in accordance with Article 27b(4) (the "assessment period"), to carry out the assessment provided for in Article 27b(1) (the "assessment").

If the proposed acquisition consists in a qualifying holding in a credit institution as referred in Article 22(1), the acquirer shall also still be subject to the notification requirement and the assessment under that Article.

4. The competent authorities shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt referred to in paragraph 3.

5. The competent authorities may, during the assessment period where necessary, and no later than on the 50th working day of the assessment period, request additional information that is necessary to complete the assessment. Such a request shall be made in writing and shall specify the additional information needed.

6. The assessment period shall be suspended between the date of request for additional information by the competent authorities and the date of receipt of a response thereto by the acquirer, providing all the requested information. The suspension shall not exceed 20 working days. Any further requests by the competent authorities for completion or clarification of the information shall be at their discretion but shall not result in a suspension of the assessment period.

7. The competent authorities may extend the suspension referred to in the second subparagraph of paragraph 6 up to 30 working days in the following situations:

(a) the entity acquired is situated or regulated in a third country;

(b) exchange of information with authorities responsible for supervising the obliged entities listed in Article 2(1) points (1) and (2) of Directive (EU) 2015/849 of the European Parliament and of the Council[*5] is necessary to perform the assessment referred to in Article 27b(1) of this Directive.

8. Where the approval of a financial holding company or mixed financial holding company pursuant to Article 21a takes place concurrently with the assessment referred in this Article, the competent authority for the purposes of that Article shall coordinate, as appropriate, with the consolidating supervisor and, where different, the competent authority in the Member State where the financial holding company or mixed financial holding company is established. In that case, the assessment period shall be suspended for a period not exceeding 20 working days until the procedure set out in Article 21a is complete.

9. Where competent authorities decide to oppose the proposed acquisition, they shall, within two working days of completion of the assessment, and not exceeding the assessment period, inform the acquirer in writing, providing the reasons for their objection. Subject to national law, an appropriate statement of the reasons for the decision opposing the proposed acquisition may be made accessible to the public at the request of the acquirer. The absence of provisions in the national law regarding an appropriate statement of the reasons for the decision opposing the proposed acquisition shall not prevent Member States from allowing the competent authority to publish such information in the absence of a request by the acquirer.

10. Where the competent authorities do not oppose the proposed acquisition within the assessment period in writing, it shall be deemed approved.

11. Competent authorities may set a maximum period for completing the proposed acquisition and extend it where appropriate.

12. Member States may not impose requirements for notification to, or approval by, competent authorities of direct or indirect acquisitions or capital that are more stringent than those set out in Article 89 of Regulation (EU) No 575/2013.

[*5] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

Article 27b

Assessment criteria

1. In dealing with the notification of the proposed acquisition provided for in Article 27a(1) and the information referred to in Article 27a(5), the competent authorities shall assess the sound and prudent management of the acquirer after the acquisition and in particular of the risks to which the acquirer is or might be exposed, in accordance with the following criteria:

(a) the sufficiently good repute and sufficient knowledge, skills and experience, as set out in Article 91(1), of any new member of the management body of the acquirer to be appointed as a result of the proposed acquisition.

(b) whether the acquirer will be able to comply and continue to comply with the prudential requirements set out in this Directive and Regulation (EU) No 575/2013, and where applicable, other acts of Union law.

(c) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive (EU) 2015/849 is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

2. For the purposes of assessing the criterion laid down in paragraph 1, point (c), and criterion laid down in Article 23(1), point (e), competent authorities shall consult, in the context of their verifications, the authorities competent for the supervision of the undertakings in line with Directive (EU) 2015/849.

3. The competent authorities may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the acquirer is incomplete, despite a request made in accordance with Article 27a.

For the purposes of this paragraph and Article 23(2), and with regard to the criterion laid down in paragraph 1, point (c), an objection in writing by the authorities competent for the supervision of the undertakings under Directive (EU) 2015/849 shall constitute a reasonable ground for opposition.

4. Member States shall neither impose any prior conditions in respect of the level of holding that must be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.

5. Member States shall publish a list specifying the information required to carry out the assessment. That information shall be provided to the competent authorities at the time of the notification referred to in Article 27a(1). The information shall be proportionate and appropriate to the nature of the entity to be acquired. Member States shall not require information that is not relevant for the prudential assessment under this Article.

6. Notwithstanding Article 27a, paragraphs 2 to 7, where two or more proposals to acquire qualifying holdings in the same entity have been notified, the competent authority shall treat the acquirers in a non-discriminatory manner.

7. EBA shall develop draft regulatory technical standards specifying:

(a) the minimum list of information to be provided to the competent authorities at the time of the notification referred to in Article 23(1), Article 27a(1), Article 27f(1) and Article 27k(1);

(b) a common assessment methodology of the criteria set out in this Article, Article 27g and Article 27l;

(c) the process applicable to notification and the prudential assessment required under Article 27a, Article 27f and Article 27k.

For the purpose of the first sub-paragraph, the EBA shall take into consideration the Directive (EU) 2017/1132 of the European Parliament and of the Council[*6].

EBA shall submit those draft implementing technical standards to the Commission by [OP please insert the date = 18 months from the date of entry into force of this amending Directive].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

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[*6] Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification).

Article 27c

Cooperation between competent authorities

1. The relevant competent authorities shall consult each other when carrying out the assessment referred to in Article 27b where the entity acquired is one of the following:

(a) a credit institution, insurance undertaking, reinsurance undertaking, investment firm or a management company within the meaning of Article 2(1) point (b) of Directive 2009/65/EC ("UCITS management company") authorised in another Member State or in a sector other than that of the proposed acquirer;

(b) a parent undertaking of a credit institution, insurance undertaking, reinsurance undertaking, investment firm or a management company within the meaning of Article 2(1), point (b) of Directive 2009/65/EC ("UCITS management company") authorised in another Member State or in a sector other than that of the proposed acquirer;

(c) a legal person controlling a credit institution, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.

The competent authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. For those purposes, the competent authorities shall communicate to each other upon request or on their own initiative all relevant information for the assessment.

2. The competent authorities shall seek to coordinate their assessments and ensure the consistency of their decisions. To this end, the decision by the competent authority of the acquirer shall indicate any views or reservations made by the

competent authority that has authorised the credit institution controlled by the parent undertaking in which the acquisition is proposed.

3. EBA shall develop draft implementing technical standards to establish common procedures, forms and templates for the consultation process between the relevant competent authorities as referred to in this Article.

EBA shall submit those draft implementing technical standards to the Commission by [OP please insert the date = 18 months from the date of entry into force of this amending Directive].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Article 27d

Notification in the case of divestiture

Member States shall require institutions, parent mixed financial holding companies in a Member State, EU parent financial holding companies and EU parent mixed financial holding companies, as well as financial holding companies and mixed financial holding companies, to notify the competent authorities where they intend to dispose, directly or indirectly, of a qualifying holding that exceeds 15% of the eligible capital of the acquirer. That notification shall be made in writing and in advance of the divestiture, indicating the size of the holding concerned.

Article 27e

Information obligations and penalties

Where the acquirer fails to notify the proposed acquisition in advance in accordance with Article 27a(1) or has acquired a qualifying holding as referred to that Article despite the competent authorities' opposition, Member States shall require those competent authorities to take appropriate measures. Such measures may include injunctions, periodic penalty payments and penalties, in accordance with Articles 65 to 72, against members of the management body and senior management. Where a qualifying holding is acquired despite opposition by the competent authorities, Member States shall, without prejudice to potential penalties, provide either for exercise of the corresponding voting rights to be suspended or for votes cast to be declared null and void.

CHAPTER 4

Material transfers of assets and liabilities

Article 27f

Notification and assessment of material transfers of assets and liabilities

1. Member States shall require institutions, parent financial holding companies in a Member State, parent mixed financial holding companies in a Member State, EU parent financial holding companies, EU parent mixed financial holding companies, or other financial holding companies and mixed financial holding companies required to seek for approval in accordance with Article 21a(1) on a sub-consolidated basis to notify their competent authority of any material transfer of assets or liabilities which they intend to execute either through a sale or any other type of

transaction (the “intended operation”). The notification shall indicate the size of the intended operation and provide the information specified in Article 27g(5).

When the intended operation involves only institutions from the same group, these institutions shall also be subject to the first sub-paragraph.

For the purposes of the first and second sub-paragraphs, each of the institutions involved in the same intended operation shall be subject individually to the obligation to notify set out in those subparagraphs.

2. For the purposes of paragraph 1:

(a) the intended operation shall be deemed material for an institution where it is at least equal to 10 % of its total assets or liabilities, where the intended operation is performed between entities of the same group, the intended operation is deemed material for an institution where it is at least equal to 15 % of its total assets or liabilities;

(b) transfers of non-performing assets, or of assets for the purpose of being included in a cover pool, within the meaning of Article 3(3) of Directive (EU) 2019/2162 of the European Parliament and of the Council[*7], or to be securitised, shall not be taken into account for calculating the percentage in point (a);

(c) transfers of assets or liabilities in the context of the use of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU shall not be taken into account for calculating the percentage referred to in point (a).

3. Competent authorities shall acknowledge receipt of the notification under paragraph 1 or of additional information under paragraph 6 promptly and in any event within two working days following receipt of the notification.

4. From the date of the written acknowledgement of receipt of the notification and of the documents, including those required by the Member State to be attached to the notification in accordance with Article 27g(5), competent authorities shall have a maximum of 60 working days to carry out the assessment provided for in Article 27g(1) (the “assessment period”).

5. Competent authorities shall inform the institution of the date of the expiry of the assessment period at the time of acknowledging receipt.

6. Competent authorities may request further necessary information to complete the assessment at any time during the assessment period and no later than the 50th working day of the assessment period. Such a request shall be made in writing and specify the additional information needed.

7. For the period between the date of request for information by the competent authorities and the receipt of a response thereto by the institution providing all the requested information, the assessment period shall be suspended. The suspension shall not exceed 20 working days. Any further requests by the competent authorities for the completion or clarification of the information shall be at their discretion but shall not result in a suspension of the assessment period.

8. Where competent authorities decide to oppose the intended operation, they shall inform the institution in writing and provide the reasons thereto within two working days of completion of the assessment and not later than the date of the expiry of the assessment period. Subject to national law, an appropriate statement of the reasons

for the decision may be made accessible to the public at the request of the institution. The absence of provisions in the national law regarding an appropriate statement of the reasons for the decision opposing the proposed acquisition shall not prevent a Member State from allowing the competent authority to publish such information in the absence of a request by the institution.

9. Where the competent authorities do not oppose the intended operation in writing within the assessment period, it shall be deemed approved.

10. The competent authorities may set a maximum period for completing the intended operation and extend it where appropriate.

11. Member States may not impose requirements for notification on, or approval by, the competent authorities that are more stringent than those set out in Article 27f.

[*7] Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU (OJ L 328, 18.12.2019, p. 29).

Article 27g

Assessment criteria

1. In dealing with the notification provided for in Article 27f(1) and the information referred to in Article 27f(6), competent authorities shall assess the intended operation in accordance with the following criteria:

(a) whether the institution will be able to comply and continue to comply with the prudential requirements set out in this Directive and Regulation (EU) No 575/2013, and where applicable, other acts of Union law.

(b) whether there are reasonable grounds to suspect that, in connection with the intended operation, money laundering or terrorist financing within the meaning of Article 1 of Directive (EU) 2015/849 is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

2. For the purposes of assessing the criterion laid down in paragraph 1, point (b), competent authorities shall consult, in the context of their verifications, the authorities competent for the supervision of the undertakings under Directive (EU) 2015/849.

3. The competent authorities may oppose the intended operation only where the criteria set out in paragraph 1 are not met or where the information provided by the institution is incomplete despite a request made in accordance with Article 27f.

With regard to the criterion laid down in paragraph 1, point (b), an objection in writing by the competent authorities under Directive (EU) 2015/849 shall constitute a reasonable ground for opposition.

4. Member States may neither subject the intended operation to meeting a specified level or amount, nor allow their competent authorities to examine the intended operation in terms of the economic needs of the market.

5. Member States shall publish a list of information items that are necessary to carry out the assessment referred to in paragraph 1. That information shall be provided to the competent authorities at the time of the notification referred to in Article 27f(1).

Member States shall not require information that is not relevant for a prudential assessment of the intended operation.

Article 27h

Cooperation between competent authorities

1. The relevant competent authorities shall consult each other when carrying out the assessment referred to in Article 27g where the parties involved in the intended operation are one of the following:

(a) a credit institution, insurance undertaking, reinsurance undertaking, investment firm or a management company within the meaning of Article 2(1), point (b) of Directive 2009/65/EC ("UCITS management company") authorised in another Member State or in a sector other than that in which the acquisition is proposed;

(b) a parent undertaking of a credit institution, insurance undertaking, reinsurance undertaking, investment firm or a management company within the meaning of Article 2(1), point (b) of Directive 2009/65/EC ("UCITS management company") authorised in another Member State or in a sector other than that in which the acquisition is proposed;

(c) a legal person controlling a credit institution, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.

2. Competent authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. For these purposes, competent authorities shall communicate to each other upon request or on their own initiative all relevant information for the assessment.

3. The competent authorities shall seek to coordinate their assessments, ensure the consistency of their decisions, and shall indicate in their decisions any views or reservations made by the competent authority supervising other entities involved in the intended operation.

4. EBA shall develop draft implementing technical standards to establish common procedures, forms and templates for the consultation process between the relevant competent authorities as referred to in this Article.

EBA shall submit those draft implementing technical standards to the Commission by [OP please insert the date = 18 months from the date of entry into force of this amending Directive].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Article 27i

Information obligations and penalties

Member States shall require that, where the institutions fail to notify the intended operation in advance in accordance with Article 27f(1), or has performed the intended operation as referred to that Article despite opposition by the competent authorities, the competent authorities take appropriate measures. Such measures may consist in injunctions, periodic penalty payments, penalties, subject to Articles 65 to 72, against members of the management body and managers.

CHAPTER 5

Mergers and divisions

Article 27j

Definitions

For the purposes of this Chapter, the following definitions shall apply:

(a) ‘merger’ means any of the following operations whereby:

(i) one or more companies, on being dissolved without going into liquidation, transfer all or parts of their assets and liabilities to another existing company, in exchange for the issue to their members of securities or shares representing the capital of that other company and, where applicable, a cash payment not exceeding 10 % of the nominal value (unless stated otherwise by the applicable national law), or, in the absence of a nominal value, of the accounting par value of those securities or shares;

(ii) one or more companies, on being dissolved without going into liquidation, transfer all or parts their assets and liabilities to another existing company, the acquiring company, without the issue of any new shares by the acquiring company, provided that one person holds directly or indirectly all the shares in the merging companies or the members of the merging companies hold their securities and shares in the same proportion in all merging companies;

(iii) two or more companies, on being dissolved without going into liquidation, transfer all or parts of their assets and liabilities to a company that they form in exchange for the issue to their members of securities or shares representing the capital of that new company and, where applicable, a cash payment not exceeding 10 % of the nominal value (unless stated otherwise by the applicable national law), or, in the absence of a nominal value, of the accounting par value of those securities or shares;

(iv) a company, on being dissolved without going into liquidation, transfers all or parts of its assets and liabilities to the company holding all the securities or shares representing its capital.

(b) ‘division’ means any of the following operations:

(i) an operation whereby, after being wound up without going into liquidation, a company transfers to more than one company all its assets and liabilities in exchange for the allocation to the shareholders of the company being divided of shares in the companies receiving contributions as a result of the division and, where applicable, a cash payment not exceeding 10 % of the nominal value (unless stated otherwise by the applicable national law), or, in the absence of a nominal value, of the accounting par value of those securities or shares;

(ii) an operation whereby, after being wound up without going into liquidation, a company transfers to more than one newly-formed company all its assets and liabilities in exchange for the allocation to the shareholders of the company being divided of shares in the recipient companies, and, where applicable, a cash payment not exceeding 10 % of the nominal value (unless stated otherwise by the applicable national law), or, in the absence of a nominal value, of the accounting par value of those securities or shares;

(iii) an operation consisting in a combination of operations described under points (i) and (ii);

(iv) an operation whereby a company being divided transfers part of its assets and liabilities to one or more recipient companies, in exchange for the issue to the shareholders of the company being divided of shares in the recipient companies, in the company being divided or in both the recipient companies and the company being divided, and, where applicable, a cash payment not exceeding 10 % of the nominal value (unless stated otherwise by the applicable national law), or, in the absence of a nominal value, of the accounting par value of those securities or shares;

(v) an operation whereby a company being divided transfers part of its assets and liabilities to one or more recipient companies, in exchange for the issue to the company being divided of securities or shares in the recipient companies.

Article 27k

Notification and assessment of the merger or division

1. Member States shall require institutions, parent financial holding companies in a Member State, parent mixed financial holding companies in a Member State, EU parent financial holding companies, EU parent mixed financial holding companies, or financial holding companies and mixed financial holding companies required to seek for approval in accordance with Article 21a(1) on a sub-consolidated basis (the ‘financial stakeholders’) carrying out a merger or division (the “proposed operation”), to notify in advance of the completion of the proposed operation the competent authorities which will be responsible for the supervision of the entities resulting from such proposed operation, indicating the relevant information, as specified in accordance with Article 27l(4).

For the purpose of the first sub-paragraph, the ECB shall considered as the competent authority to be notified and in charge the assessment when the entities resulting from the proposed operation would meet on a consolidated bases any of the following conditions:

(a) the total value of its assets exceeds EUR 30 billion;

(b) the ratio of its total assets over the GDP of the participating Member State of establishment exceeds 20%, unless the total value of its assets is below EUR 5 billion.

For the purpose of the first sub-paragraph, in case the proposed operation consists in a division, the competent authority in charge of the supervision of the entity carrying out the proposed operation shall be the competent authority to be notified and in charge of the assessment.

2. The competent authorities shall acknowledge receipt of the notification referred to in paragraph 1 or of the additional information submitted in accordance with paragraph 3 promptly and in any event within 10 working days following receipt of the notification or of the additional information.

Where the proposed operation involves only financial stakeholders from the same group, the competent authorities shall have a maximum of 60 working days as from the date of the written acknowledgement of receipt of the notification and all documents required by the Member State to be attached to the notification in accordance with Article 27l(5) ("the assessment period"), to carry out the assessment provided for in Article 27l(1).

The competent authority shall inform the financial stakeholder of the date of the expiry of the assessment period at the time of acknowledging receipt.

3. Competent authorities may request further information that is necessary to complete the assessment. Such a request shall be made in writing and shall specify the additional information needed.

Where the proposed operation involves only financial stakeholders from the same group, competent authorities may request additional information by no later than the fiftieth working day of the assessment period.

For the period between the date of request of additional information by the competent authorities and the receipt of a response thereto by the financial stakeholders providing all the requested information, the assessment period shall be suspended. The suspension shall not exceed 20 working days. Any further requests by the competent authorities for completion or clarification of the provided information shall be at their discretion but shall not result in a suspension of the assessment period.

4. By way of derogation from paragraph 3, third subparagraph, competent authorities may extend the suspension referred to therein to a maximum of 30 working days in the following cases:

(a) the entity acquired is situated or regulated in a third country;

(b) an exchange of information with authorities responsible for supervising the obliged entities referred to in Article 2(1), points (1) and (2), of Directive (EU) 2015/849 is necessary to perform the assessment foreseen under Article 27l(1) of this Directive.

5. The proposed operations shall not be completed before the issuance of a positive opinion by the competent authorities.

6. The competent authorities shall, within two working days from the completion of their assessment, issue in writing a motivated positive or negative opinion to the financial stakeholders. Subject to national law, an appropriate statement of the reasons for the opinion may be made accessible to the public at the request of the financial stakeholders. This shall not prevent a Member State from allowing the competent authority to publish such information in the absence of a request by the financial stakeholder.

The financial stakeholders shall transmit the motivated opinion issued by their competent authorities under the first subparagraph to the authorities in charge, under the national law, of the scrutiny of the proposed operation.

7. When the proposed operation involves only financial stakeholders from the same group, and the competent authorities do not oppose the proposed operation within the assessment period in writing, the opinion shall be deemed to be positive.

8. The positive opinion issued by the competent authority may be limited in time.

9. Member States shall not impose requirements related to notification and approval as described in this Chapter that are more stringent than those set out herein.

10. This Chapter is without prejudice to the application of the Council Regulation (EC) No 139/2004*[8] and Directive (EU) 2017/1132 of the European Parliament and of the Council.

11. The assessment under Article 27k(1) shall not be performed where the proposed operation requires an authorisation in accordance with Article 8, or an approval in accordance with Article 21a.

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*[8] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation).

Article 27l

Assessment criteria

1. In assessing the notification provided for in Article 27k(1) and the information referred to in Article 27k(3), competent authorities shall, in order to ensure the soundness of the prudential profile of the financial stakeholders after the completion of the proposed operation and in particular the risks to which the financial stakeholder is or might be exposed in the course of the proposed operation and the risks to which the financial stakeholder resulting from the proposed operation might be exposed, assess the proposed operation in accordance with the following criteria:

(a) the reputation of entities involved in the proposed operation;

(b) the sufficiently good repute and sufficient knowledge, skills and experience, as set out in Article 91(1), of any member of the management body who will direct the business of the financial stakeholder resulting from the proposed operation;

(c) the financial soundness of entities involved in the proposed operation, in particular in relation to the type of business pursued and envisaged for the financial stakeholder resulting from the proposed operation;

(d) whether the entity resulting from the proposed operation will be able to comply and continue to comply with the prudential laid down in this Directive and Regulation (EU) No 575/2013, and where applicable, other acts of Union law, in particular Directives 2002/87/EC and 2009/110/EC;

(e) whether the implementation plan of the proposed operation is realistic, sound and efficient from a prudential perspective;

(f) whether there are reasonable grounds to suspect that, in connection with the proposed operation, money laundering or terrorist financing within the meaning of Article 1 of Directive (EU) 2015/849 is being or has been committed or attempted, or that the proposed operation could increase the risk thereof.

The implementation plan referred to in point (d) shall be subject to appropriate monitoring by the competent authority until completion of the proposed operation.

2. For the purposes of assessing the criterion laid down in paragraph 1, point (f), competent authorities shall consult, in the context of their verifications, the authorities competent for the supervision of the undertakings under Directive (EU) 2015/849.

3. The competent authorities may issue a negative opinion to the proposed operation only if the criteria set out in paragraph 1 are not met or where the information provided by the financial stakeholder is incomplete despite a request made in accordance with Article 27k.

With regard to the criterion laid down in paragraph 1, point (f), an objection in writing by the authorities competent for the supervision of the undertakings in line with Directive (EU) 2015/849 shall constitute a reasonable ground for negative opinion.

4. Member States shall not allow their competent authorities to examine the proposed operation in terms of the economic needs of the market.

5. Member States shall publish a list of information items that are necessary to carry out the assessment referred to in Article 27k(1) and that must be provided to the competent authorities at the time of notification referred to that Article. The information required shall be proportionate and appropriate to the proposed operation. Member States shall not require information that is not relevant for a prudential assessment.

Article 27m

Cooperation between competent authorities

1. The relevant competent authorities shall consult each other when carrying out the assessment referred to in Article 27l where the proposed operation involves, in addition to the financial stakeholder, entities that are one of the following:

(a) a credit institution, insurance undertaking, reinsurance undertaking, investment firm or a management company within the meaning of Article 2(1), point (b) of Directive 2009/65/EC (“UCITS management company”) authorised in another Member State or in a sector other than that in which the acquisition is proposed;

(b) a parent undertaking of a credit institution, insurance undertaking, reinsurance undertaking, investment firm or a UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed;

(c) a legal person controlling a credit institution, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.

2. The competent authorities shall, without undue delay, provide each other with any information which is relevant for the assessment. In that regard, the competent authorities shall communicate to each other upon request all relevant information and

shall communicate on their own initiative all essential information. A decision by the competent authority of the financial stakeholder shall indicate any views or reservations expressed by the competent authority that supervise one or several of the entities listed above and involved in the proposed operation.

3. The competent authorities shall seek to coordinate their assessments, ensure the consistency of their opinions, and shall indicate in their opinions any views or reservations made by the competent authority supervising other financial stakeholders.

4. EBA shall develop draft implementing technical standards to establish common procedures, forms and templates for the consultation process between the relevant competent authorities as referred to in this Article.

EBA shall submit those draft implementing technical standards to the Commission by [OP please insert the date = 18 months from the date of entry into force of this amending Directive].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Article 27n

Information obligations and penalties

Member States shall require that, where the financial stakeholders fail to provide prior notification of the proposed operation in accordance with Article 27k(1) or have carried out the proposed operation as referred to that Article without prior positive opinion by the competent authorities, the competent authorities shall take appropriate measures. Such measures may consist in injunctions, periodic penalty payments, penalties, subject to Articles 65 to 72, against members of the management body and managers of the financial stakeholders or of the entity resulting from the proposed operation.';

(8) Title VI is replaced by the following:

‘Title VI
PRUDENTIAL SUPERVISION OF THIRD COUNTRY BRANCHES AND RELATIONS WITH THIRD COUNTRIES’

CHAPTER 1

Prudential supervision of third-country branches

SECTION I

GENERAL PROVISIONS

Article 47
Scope and definition

1. This Chapter lays down the rules concerning the carrying out in a Member State of:

(a) any of the activities listed in Annex I to this Directive by an undertaking established in a third country;

(b) the activities referred to in Article 4(1), point (b), of Regulation (EU) 575/2013, by an undertaking established in a third country that fulfils any of the criteria laid down in points (i) to (iii) of that point.

2. By derogation from paragraph 1, where the undertaking in the third country is not a credit institution or an undertaking that meets the criteria of paragraph 1, point (b), the carrying out of any of the activities listed in Annex I, points (4), (5), and (7) to (15), to this Directive by that undertaking in a Member State shall be subject to Title II, Chapter IV, of Directive 2014/65/EU.

3. For the purposes of this Title, the following definitions shall apply:

(a) ‘third country branch’ shall mean branches established in a Member State by either:

  (i) an undertaking which has its head office in a third country, for the purpose of carrying out any of the activities referred to in paragraph 1;

  (ii) a credit institution which has its head office in a third country;

(b) ‘head undertaking’ shall mean the undertaking with its head office in the third country that has established the third country branch in the Member State, and the undertaking’s intermediate and ultimate parent undertakings, as the case may be.

Article 48
Prohibition of discrimination

Member States shall not apply to third country branches, when commencing or continuing to carry out their business, provisions which result in a more favourable treatment than that accorded to branches of institutions having their head office in another Member State of the European Union.

Article 48a

Classification of third country branches

1. Member States shall classify third country branches as class 1 where those branches meet any of the following conditions:

(a) the total value of the assets booked by the third country branch in the Member State is equal to or higher than EUR 5 billion, as reported for the immediately preceding annual reporting period in accordance with Section II, Sub-section 4;

(b) the third country branch's authorised activities include taking deposits and other repayable funds from retail customers;

(c) the third country branch is not a qualifying third country branch in accordance with Article 48b.

2. Member States shall classify third country branches that do not meet any of the conditions laid out in paragraph 1 as class 2.

3. Competent authorities shall update the classification of third country branches as follows:

(a) where a class 1 third country branch ceases to meet the conditions laid down in paragraph 1, it shall immediately be considered as class 2;

(b) where a class 2 third country branch starts to meet one of the conditions laid down in paragraph 1, it shall be considered as class 1 only after a period of three months from the date on which it started to meet those conditions.

Article 48b

Conditions for 'qualifying third country branches'

1. Where the following conditions are met in relation to a third country branch, that branch shall be regarded as a 'qualifying third country branch' for the purposes of this Title:

(a) the head undertaking of the third country branch is established in a country that applies prudential standards and a supervisory oversight in accordance with the third country's banking regulatory framework that are at least equivalent to this Directive and Regulation (EU) No 575/2013;

(b) the supervisory authorities of the third country branch's head undertaking are subject to confidentiality requirements that are at least equivalent to the requirements laid down in Title VII, Chapter 1, Section II of this Directive;

(c) the country where the third country branch's head undertaking is established is not listed as a high-risk third country that has strategic deficiencies in its regime on anti-money laundering and counter terrorist financing, in accordance with Article 9 of Directive (EU) 2015/849;

2. The Commission may adopt, by means of implementing acts, decisions as to whether the conditions laid down in paragraph 1, points (a) and (b) of this Article are met in relation to a third country's banking regulatory framework. For those

purposes, the Commission shall comply with the examination procedure referred to in Article 464(2) of Regulation (EU) No 575/2013.

3. Before adopting the decision referred to in paragraph 2, the Commission may request the EBA's assistance in accordance with Article 33 of Regulation (EU) No 1093/2010 to conduct an assessment of the relevant third country's banking regulatory framework and confidentiality requirements and to issue a report on that framework's compliance with the conditions laid down in paragraph 1, points (a) and (b), of this Article. EBA shall publish the outcome of its assessment on its website.

4. EBA shall keep a public register of the third countries and third country authorities that meet the conditions laid down in paragraph 1.

5. Upon receiving an application for authorisation in accordance with Article 48c, competent authorities shall assess the conditions laid down in paragraph 1 of this Article and in Article 48a to classify the third country branch as class 1 or class 2. Where the relevant third country is not recorded on the register referred to in paragraph 4 of this Article, the competent authority shall request the Commission to assess the third country's banking regulatory framework and confidentiality requirements for the purposes of paragraph 2 of this Article, provided that the condition referred to paragraph 1, point (c), of this Article is met. The competent authority shall classify the third country branch as class 1 pending the Commission's adoption of a decision in accordance with paragraph 2 of this Article.

SECTION II

AUTHORISATION AND REGULATORY REQUIREMENTS

SUB-SECTION 1
AUTHORISATION REQUIREMENTS

Article 48c

Conditions for the authorisation of third country branches

1. Member States shall require that third country undertakings establish a branch in their territory before commencing the activities referred to in Article 47(1). The establishment of a third country branch shall be subject to prior authorisation in accordance with this Chapter.

2. Member States shall require that the applications for authorisation of third country branches be accompanied by a programme of operations setting out the envisaged business, the activities to be carried out among those referred to in Article 47(1) and the structural organisation and risk controls of the branch in the relevant Member State in accordance with Article 48h.

3. Third country branches shall only be authorised where all of the following conditions are fulfilled:

(a) the third country branch meets the minimum regulatory requirements laid down in Sub-section 2;

(b) the activities that the head undertaking seeks authorisation for in the Member State are covered by the authorisation that such head undertaking holds in the third country where it is established and subject to supervision therein;

(c) the supervisory authority of the head undertaking in the third country has been notified of the application to establish a branch in the Member State and the accompanying documents referred to in paragraph 2;

(d) the authorisation provides that the third country branch may only conduct the authorised activities within the Member State where it is established and expressly prohibits the third country branch from offering or conducting those same activities in other Member States on a cross-border basis;

(e) for the purpose of performing its supervisory functions, the competent authority is able to access all the necessary information on the third country branch's head undertaking from its supervisory authorities and to effectively coordinate its supervisory activities with those of the third country supervisory authorities, in particular in periods of crisis or financial distress affecting the head undertaking, its group or the third country's financial system;

(f) there are no reasonable grounds to suspect that the third country branch would be used to commit or facilitate the commission of money laundering within the meaning of Article 1, point 3 of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing or terrorist financing as defined in Article 1, point 5 of that Directive.

For the purposes of point (e) of this paragraph, the competent authorities shall endeavor to use the model administrative agreements developed by EBA in accordance with Article 33(5) of Regulation (EU) No 1093/2010.

4. For the purposes of assessing whether the condition laid down in paragraph 3, point (f), is met, competent authorities shall consult the authority responsible for supervision of anti-money laundering in the Member State in accordance with Directive (EU) 2015/849 and obtain written confirmation that the condition is fulfilled before proceeding to authorising the third country branch.

5. EBA shall develop draft regulatory technical standards to further specify:

(a) the information to be provided to the competent authorities upon application for authorisation of a third country branch, including the programme of operations and the structural organisation and governance arrangements referred to in paragraph 2;

(b) the procedure for authorisation of the third country branch, as well as the standard forms and templates for the provision of the information referred to in point (a) of this paragraph;

(c) the conditions for authorisation referred to in paragraph 3.

EBA shall submit these draft regulatory technical standards to the Commission by [OP please insert the date = 6 months from the date of entry into force of this amending Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 48d

Conditions for the refusal or withdrawal of a third country branch's authorisation

1. Member States shall, at a minimum, provide for the following conditions for refusing or withdrawing the authorisation of a third country branch:

(a) the third country branch does not meet the requirements for authorisation laid down in Article 48c or in national law;

(b) the third country branch's head undertaking or its group do not meet the prudential requirements that apply to them under the third country law or there are reasonable grounds to suspect that they do not meet or that they will breach those requirements within the following 12 months.

For the purposes of point (b) of this paragraph, third country branches shall promptly notify their competent authorities where the circumstances referred to in that point have taken place.

2. Without prejudice to paragraph 1, competent authorities may withdraw the authorisation granted to a third country branch where any of the following conditions is met:

(a) the third country branch does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased to engage in business for more than six months, unless the Member State concerned has made provision for the authorisation to lapse in such cases;

(b) the third country branch has obtained the authorisation through false statements or any other irregular means;

(c) the third country branch no longer fulfils any additional conditions or requirements under which the authorisation was granted;

(d) the third country branch can no longer be relied on to fulfil its obligations towards its creditors, and, in particular, no longer provides security for the assets entrusted to it by its depositors;

(e) the third country branch falls within one of the other cases where national law provides for withdrawal of authorisation;

(f) the third country branch commits one of the breaches referred to in Article 67(1);

(g) there are reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted in connection with the third country branch, its head undertaking or its group, or there is a heightened risk of money laundering or terrorist financing being committed or attempted in relation to the third country branch, its head undertaking or its group.

3. For the purposes of assessing whether the condition laid down in paragraph 2(g) is met, the competent authorities shall consult the authority responsible for supervision of anti-money laundering in the Member State in accordance with Directive (EU) 2015/849.

4. The EBA shall develop draft regulatory technical standards to specify:

(a) the conditions laid down in paragraphs 1 and 2 for refusing or withdrawing a third country branch's authorisation;

(b) the procedure to withdraw the third country branch's authorisation;

(c) the content and process of the notification to the competent authorities referred to in the last subparagraph of paragraph 1 of this Article.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 12 months from the date of entry into force of this amending Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

SUB-SECTION 2
MINIMUM REGULATORY REQUIREMENTS

Article 48e

Capital endowment requirement

1. Without prejudice to other applicable capital requirements in accordance with national law, Member States shall require that third country branches maintain at all times a minimum capital endowment that is at least equal to:

(a) for class 1 third country branches, 1% of the branch's average liabilities as reported for the three immediately preceding annual reporting periods in accordance with Sub-section 4, subject to a minimum of EUR 10 million;

(b) for class 2 third country branches, EUR 5 million.

2. Third country branches shall fulfil the minimum capital endowment requirement referred to in paragraph 1 with assets in the form of any of the following:

(a) cash or cash assimilated instruments;

(b) debt securities issued by central governments or central banks of Union Member States; or

(c) any other instrument that is available to the third country branch for unrestricted and immediate use to cover risks or losses as soon as those occur.

3. Member States shall require third country branches to deposit the capital endowment instruments referred to in paragraph 2 in an escrow account with a credit institution in the Member State where the branch is authorised or, where permitted under national law, with the central bank of the Member State. The capital endowment instruments deposited in the escrow account shall be pledged or assigned by way of security in favour of the resolution authority to secure the claims of the third country branch's creditors. Member States shall lay down rules to grant the resolution authority the power to act in a fiduciary capacity for the benefit of those creditors for the purposes of this Article and Article 48g.

4. The EBA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010, to specify the requirement laid down in paragraph 2, point (c) of this Article in relation to instruments that are available for unrestricted and immediate use to cover risks or losses as soon as those occur. The EBA shall issue those guidelines by [OP please insert the date = 12 months from date of entry into force of this amending Directive].

Article 48f

Liquidity requirements

1. Without prejudice to other applicable liquidity requirements in accordance with national law, Member States shall at a minimum require third country branches to maintain at all times a volume of unencumbered and liquid assets sufficient to cover liquidity outflows over a minimum period of 30 days.

2. For the purposes of paragraph 1, Member States shall require class 1 third country branches to comply with the liquidity coverage requirement laid down in Part Six, Title I of Regulation (EU) No 575/2013 and Commission Delegated Regulation (EU) 2015/61[*9].

3. Member States shall require third country branches to deposit the liquid assets held to comply with this Article in an escrow account with a credit institution in the Member State where the branch is authorised or, where permitted under national law, with the central bank of the Member State. The liquid assets deposited in the escrow account shall be pledged or assigned by way of security in favor of the resolution authority to secure the claims of the third country branch's creditors. Member States shall lay down rules to grant the resolution authority the power to act in a fiduciary capacity for the benefit of those creditors for the purposes of this Article and Article 48g.

4. Competent authorities may waive the liquidity requirement laid down in this Article for qualifying third country branches.

[*9] Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions (OJ L 11, 17.1.2015, p. 1).

Article 48g

Insolvency and resolution of third country branches

1. Member States shall ensure that, in the event of insolvency or resolution of a third country branch pursuant to Article 96 of Directive 2014/59/EU, resolution authorities are vested with legal power and authority to enforce the security created over the liquid assets and capital endowment instruments held in the escrow account pursuant to Articles 48e(3) and 48f(3) of this Directive. When dealing with those liquid assets and capital endowment instruments following the enforcement of security, resolution authorities shall take into account the existing national rules, as well as supervisory and judicial powers, and ensure adequate coordination with the national administrative or judicial authorities, in accordance with national insolvency law and the principles set out in Article 96 of Directive 2014/59/EU, as appropriate.

2. Any surplus of liquid assets or capital endowment instruments held in the escrow account and not used in accordance with paragraph 1 shall be dealt with in accordance with the applicable national law.

Article 48h

Internal governance and risk controls

1. Member States shall require third country branches to have at least two persons effectively directing their business in the Member State subject to prior approval by the competent authorities. Those persons shall be of good repute and possess sufficient knowledge, skills and experience and commit sufficient time to the performance of their duties.

2. Member States shall require class 1 third country branches to comply with Articles 74 and 75 and Article 76(5). Competent authorities may require third country branches to establish a local management committee to ensure an adequate governance of the branch.

3. Member States shall require class 2 third country branches to comply with Articles 74, and 75 and to have internal control functions as provided for under Article 76(5), first, second and third subparagraphs.

Depending of their size, internal organisation and the nature, scope and complexity of their activities, competent authorities may require class 2 third country branches to appoint heads of internal control functions as provided under Article 76(5), fourth and fifth subparagraphs.

4. Member States shall require third country branches to establish reporting lines to the management body of the head undertaking that cover all material risks and risk management policies and changes thereof and have in place adequate ICT systems and controls to ensure that policies are duly complied with.

5. Member States shall require third country branches to monitor and manage their outsourcing arrangements, and to ensure that their competent authorities have full access to all information they need to fulfil their supervisory function.

6. Member States shall require third country branches that engage in back-to-back or intragroup operations to have adequate resources to identify and properly manage their counterparty credit risk where material risks associated with assets booked by the third country branch are transferred to the counterparty.

7. Where critical or important functions are delegated to the head undertaking, competent authorities in charge of the supervision of third country branches shall have access to all information they need to fulfil their supervisory function.

8. Competent authorities shall periodically require that an independent third party assesses the implementation of and on-going compliance with the requirements laid down in this Article and addresses a report to the competent authority with its findings and conclusions.

9. EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, on the application to third country branches of the arrangements, processes and mechanisms referred to in Article 74(1), taking into account Article 74(2), and on the application to third country branches of Article 75 and Article 76(5), by [OP please insert the date = 6 months from date of entry into force of this amending Directive].

Article 48i

Booking requirements

1. Member States shall require third country branches to maintain a registry book enabling those branches to track and keep a comprehensive and precise record of all the assets and liabilities associated with the activities of the third country branch in the Member State and to manage those assets and liabilities autonomously within the branch. The registry book shall provide sufficient information on the risks generated by the third country branch and on how they are managed.

2. Member States shall require third country branches to develop policies on booking arrangements for the management of the registry book referred to in paragraph 1 for the purposes laid down therein. Those policies shall be documented and validated by the relevant governing body of the third country branch's head undertaking. The policy document referred to in this paragraph shall provide a clear rationale for the booking arrangements and set out how those arrangements align with the third country branch's business strategy.

3. Competent authorities shall require that an independent written and reasoned opinion on the implementation of and on-going compliance with the requirements laid down in this Article be regularly prepared and addressed to the competent authority with its findings and conclusions.

4. EBA shall develop draft regulatory technical standards to specify the booking arrangements that third country branches shall apply for the purposes of this Article, in particular as regards:

(a) the methodology to be used by the third country branch to identify and keep a comprehensive and precise track record of the assets and liabilities associated with the third country branch's activities in the Member State; and

(b) the specific treatment to identify and keep a record of the assets and liabilities originated by the third country branch and booked or held remotely in other branches or subsidiaries of the same group on behalf of or for the benefit of the originating third country branch.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 6 months from the date of entry into force of this amending Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

SUB-SECTION 3
POWER TO REQUIRE AUTHORISATION UNDER TITLE III AND REQUIREMENTS ON SYSTEMIC BRANCHES

Article 48j

Power to require establishing a subsidiary

1. Member States shall ensure that competent authorities have the power to require third country branches to apply for authorisation under Title III, Chapter 1, at least where:

(a) the third country branch has engaged in the past or currently engages in interconnected activities with other third country branches or subsidiary institutions of the same group or in one of the activities referred to in Article 47(1) with customers or counterparts in other Member States in contravention of the internal market rules; or

(b) the third country branch meets the systemic importance indicators referred to in Article 131(3) and poses a significant risk to the financial stability of the Union or the Member State where it is established.

2. Before making the decision referred to in paragraph 1, competent authorities shall consult the competent authorities of the Member States where the relevant third country group has other third country branches and subsidiary institutions.

Where they disagree, the competent authorities of the third country group in other Member States may refer the matter to the EBA for mediation in accordance with Article 19 of Regulation (EU) No 1093/2010. EBA shall take its decision within one month of matter being referred and the competent authority of the relevant third country branch shall refrain from taking its decision during that time.

The competent authority of the relevant third country branch shall adopt the decision referred to in paragraph 1 in conformity with the decision of EBA.

3. Before imposing the requirement laid down in this Article on a third country branch in accordance with paragraph 1, point (a), the competent authority shall request EBA to issue a recommendation in accordance with Article 16 of Regulation (EU) No 1093/2010 on the interpretation of that point in relation to that third country branch.

4. EBA shall develop draft regulatory technical standards to specify the systemic importance indicators referred to in Article 131(3) as regards third country branches for the purposes of paragraph 1, point (b), of this Article and Article 48k. EBA shall have regard to the following items:

(a) the types of activities and services provided and the operations being conducted by the third country branch and, in particular, whether the third country branch provides those activities and services and conducts those operations with a very narrow set of customers or counterparts;

(b) the complexity of the third country branch's structure, organisation and business model;

(c) the degree of interconnectedness of the third country branch with the financial system of the Union and of the Member State where it is established;

(d) the substitutability of the activities, services or operations conducted or of the financial infrastructure provided by the third country branch;

(e) the market share of the third country branch in the Union and in the Member States where it is established as regards total banking assets and in relation the activities and services it provides and the operations that it conducts;

(f) the likely impact that a suspension or closure of the third country branch's operations or business could have on systemic liquidity or the payment, clearing and settlement systems in the Union and in the Member State where it is established;

(g) the likely impact that a suspension or closure of the third country branch's operations could have on intragroup financing agreements or intragroup services covering critical functions in the Union and in the Member States where it is established;

(h) the cross-border activity of the third country branch with its head undertaking and with counterparts in other third countries;

(i) the role and importance of the third country branch for the activities, services and operations of the third country group in the Union and in the Member State where it is established;

(j) the volume of the third country group's business being conducted through third country branches, relative to the business of that same group conducted through subsidiary institutions authorised in the Union and in the Member State where the third country branches are established;

(k) whether the third country branch is a qualifying third country branch in accordance with Article 48b.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 12 months from the date of entry into force of this amending Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 48k

Assessment of systemic importance and requirements on systemic third country branches

1. The third country branch or branches in the Union that belong to the same third country group shall be subject to the assessment laid down in paragraph 2 of this Article where the aggregate amount of assets that they hold on their books in the Union as reported in accordance with Sub-section 4 is equal to or higher than EUR 30 billion, either:

(a) on average for the immediately preceding three annual reporting periods; or

(b) in absolute terms for at least three annual reporting periods during the immediately preceding five annual reporting periods.

2. Competent authorities shall assess whether the third country branches referred to in paragraph 1 have systemic importance for the Union and for the Member States where they are stablished. For those purposes, competent authorities shall assess whether those third country branches meet the indicators of systemic importance referred to in Article 48j(4) and Article 131(3).

3. The assessment of systemic importance referred to in paragraph 2 of this Article shall be performed by one of the following:

(a) where Article 111 applies to the relevant third country group, the consolidated supervisor of that third country group in the Union in accordance with that Article;

(b) where Article 111 does not apply to the relevant third country group, the competent authority that would become the consolidated supervisor of that third country group in the Union in accordance with that Article, should the third country branches be treated as subsidiary institutions;

(c) where the third country group has third country branches and subsidiary institutions in only one Member State, the competent authority of that Member State; or

(d) EBA where, after three months from the starting date of the annual reporting period immediately following the last annual reporting period that triggered the obligation to conduct the assessment in accordance with paragraph 1 of this Article:

(i) the assessment has not been commenced by either of the competent authorities referred to in points (a), (b) or (c); or

(ii) the competent authority that would be the consolidated supervisor in accordance with point (b) has not been determined.

The competent authorities referred to in points (a) and (b), acting as "lead competent authority", or, where applicable, EBA shall conduct the assessment in full cooperation with all the competent authorities concerned. The competent authorities concerned shall assist and provide all the necessary documentation to the lead competent authority or, where applicable, EBA. For those purposes, 'competent authorities concerned' shall mean all the authorities responsible for the supervision of the third country branches and subsidiary institutions of the relevant third country group in the Union.

Before the assessment of systemic importance is concluded, the lead competent authority, the competent authority referred to in point (c) or, where applicable, EBA shall hear the third country group and shall set reasonable timeframes for the third country group to submit documentation and make its views known in writing.

4. The lead competent authority shall conclude the assessment referred to in paragraph 2 and issue a report by no later than six months from the starting date of the annual reporting period immediately following the last reporting period that triggered the obligation to conduct the assessment in accordance with paragraph 1. Where, in accordance with paragraph 3, EBA is conducting the assessment, that period shall start to count from the date on which EBA became responsible for conducting the assessment. The report shall lay down the following:

(a) the assessment of systemic importance, which shall set out a clear and detailed analysis of the systemic importance indicators referred to in paragraph 2 in relation to the relevant third country branches and the lead competent authority's or, where applicable, EBA's conclusion;

(b) where the lead competent authority or, where applicable, EBA concludes that the third country branches are systemic, a proposed draft decision either:

(i) to require the third country branches to apply for authoritisation under Title III, Chapter 1;

(ii) to require the third country branches to restructure their assets or activities in the Union in such a manner that they cease to qualify as systemic in accordance with paragraph 2 of this Article;

(iii) to impose additional requirements on the third country branches or the subsidiary institutions of the third country group in the Union in accordance with Article 48p or Title VII, Chapter 2, Section IV, respectively;

(iv) not to impose any of the requirements referred to in points (i) to (iii) for a deferral period not exceeding 12 months and subject to conducting a new assessment of the third country branches before the expiry date of that period.

(c) the rationale of the proposed draft decision referred to in point (b), which shall set out a detailed explanation of how the decision relates back to the assessment referred to in point (a).

The lead competent authority or, where applicable, EBA shall only propose the decision referred to in point (b)(iv) where it can justify that the absence of requirements on the third country branches under this Article would not lead to a significant increase in the risk that those branches pose to financial stability and market integrity of the Union or the Member States during the deferral period referred to in that point.

Where applicable, the references to 'lead competent authority" in this Article shall be understood as references to the competent authority referred to in paragraph 3, point (c). Where that competent authority is responsible for issuing the report laid down in this paragraph, the decision set out therein shall enter into force on the date of its notification to the third country branches. The competent authority shall also notify the decision to EBA.

5. The lead competent authority or, where applicable, EBA shall submit the report referred to in paragraph 5 to the competent authorities concerned. The lead competent authority and the competent authorities concerned shall do their best endeavours to reach a joint decision by consensus on the report and, where applicable, the draft decision within three months from the date on which the report was transmitted.

Where the competent authorities fail to reach a consensus after the end of the three-month period referred to in the first subparagraph, the joint decision shall be made within the month immediately following the end of the preceding three month period by a majority of votes cast. For those purposes, the voting stakes shall be allocated to the competent authorities in accordance with the following:

(a) subject to point (b), each competent authority, including the lead competent authority, shall be entitled to a voting stake equal to the percentage of assets of the third country group under its supervision relative to the total assets of that group in the Union;

(b) the voting stake of the lead competent authority shall be increased up to 25 % where it did not reach that percentage in accordance with point (a);

(c) where the voting stake of the lead competent authority has been increased to 25 % in accordance with point (b), the voting stakes of the remaining competent authorities that result from point (a) shall be adjusted as appropriate as stakes on the remaining 75 % of the voting rights.

For the purposes of point (a), the assets held in both the third country branches and subsidiary institutions of the third country group shall be included in the calculation.

After its adoption, the joint decision shall enter into force on the date it is notified to the third country branches. The joint decision shall also be notified to the EBA.

6. The third country branches shall have a period of three months from the date of the decision's entering into force in accordance with paragraphs 5 or 6 to comply with the requirements laid down in that decision.

Where the third country branches are required to apply for authorisation as institutions in accordance with Title III, Chapter 1, their authorisation under this Title shall remain valid on an interim basis until the expiry of the deadline referred to in the first subparagraph of this paragraph is reached or, as the case may be, until the completion of the authorisation process as institutions. The third country branches may request the competent authority to extend the three-month deadline referred to in the first subparagraph where they can justify the need for such an extended deadline to comply with the relevant requirement imposed on them.

Where the threshold referred to in paragraph 1 is met by aggregation of assets of various branches, the competent authorities may impose the requirement referred to in this subparagraph in decreasing asset size order up to the point in which the total assets remaining on the books of the third country branches in the Union is less than EUR 30 billion.

7. EBA shall develop draft regulatory technical standards to specify the rules of construction for the interpretation of Article 111 of this Directive for the purposes of determining the hypothetical consolidated supervisor as referred to in paragraph 3, point (b), of this Article.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 12 months from the date of entry into force of this amending Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

SUB-SECTION 4
REPORTING REQUIREMENTS

Article 48l

Regulatory, financial and head undertaking information

1. Member States shall require third country branches to periodically report to their competent authorities information on:

(a) the assets and liabilities held on their books in accordance with Article 48i, with a breakdown that singles out:

  (i) the largest recorded assets and liabilities classified by sector and counterparty type (including, in particular, financial sector exposures);

  (ii) significant exposure and funding source concentrations to specified types of counterparties;

  (iii) significant internal transactions with the head undertaking and with members of the head undertaking's group;

(b) the third country branch's compliance with the requirements that apply to them under this Directive;

(c) on an *ad hoc* basis, the deposit protection arrangements available to depositors in the third country branch in accordance with Article 15(2) and (3) of Directive 2014/49;

(d) additional regulatory requirements imposed on the third country branch by Member States under national law.

For the purposes of reporting the information on the assets and liabilities held on their books in accordance with point (a), third country branches shall apply the international accounting standards adopted in accordance with the procedure laid down in Article 6(2) of Regulation (EC) No 1606/2002[*10] or the applicable GAAP in the Member State.

2. Member States shall require third country branches to report to their competent authorities the following information on their head undertaking:

(a) on a periodic basis, aggregated information on the assets and liabilities held or booked, respectively, by the subsidiaries and other third country branches of that head undertaking's group in the Union;

(b) on a periodic basis, the head undertaking's compliance with its applicable prudential requirements on an individual and consolidated basis;

(c) on an ad *hoc basis*, significant supervisory reviews and assessments when those are conducted on the head undertaking and the consequent supervisory decisions;

(d) the recovery plans of the head undertaking and the specific measures that could be taken on the third country branch in accordance with those plans, and any subsequent updates and amendments to those plans;

(e) the head undertaking's business strategy in relation to the third country branch, and any subsequent changes to that strategy;

(f) the services provided by the head undertaking to eligible counterparties or professional clients within the meaning of Section 1 of Annex II to Directive 2014/65/EU established or situated in the Union on the basis of reverse solicitation of services in accordance with Article 21c of this Directive.

3. The reporting obligations laid down in this Article shall not prevent competent authorities from imposing additional *ad hoc* reporting requirements on third country branches where the competent authority deems the additional information necessary to gain a comprehensive view of the branch's or its head undertaking's business, activities or financial soundness, verify the branch's and its head undertaking's compliance with applicable laws and ensure the branch's compliance with those laws.

[*10] Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).'

Article 48m

Standard forms and templates and frequency of reporting

1. EBA shall develop draft implementing technical standards to specify the uniform formats, definitions, the IT solutions and the frequency of reporting to be applied for the purposes of Article 48l.

The reporting requirements referred to in the first subparagraph shall be proportionate to the classification of third country branches as either class 1 or class 2.

EBA shall submit those draft implementing technical standards to the Commission by [OP please insert the date = 6 months from the date of entry into force of this amending Directive].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

2. The regulatory and financial information referred to in this Article shall be reported at least biannually by class 1 third country branches and at least annually by class 2 third country branches.

3. Competent authorities may waive all or part of the requirements to report information on the head undertaking laid out in paragraph 48l(3) for qualifying third country branches, provided that the competent authority is able to obtain the relevant information directly from the supervisory authorities of the relevant third country.

SECTION III

SUPERVISION

Article 48n

Third country branches supervision and supervisory examination programme

1. Member States shall require that competent authorities comply with this Section and, *mutatis mutandis*, with Title VII for the purposes of supervising third country branches.

2. Competent authorities shall include third country branches in the supervisory examination programme referred to in Article 99.

Article 48o

Supervisory review and evaluation

1. Member States shall require that competent authorities review the arrangements, strategies, processes and mechanisms implemented by third country branches to comply with the provisions that apply to them under this Directive and, where applicable, any additional regulatory requirements under national law.

2. On the basis of the review conducted in accordance with paragraph 1, the competent authorities shall evaluate whether the arrangements, strategies, processes and mechanisms implemented by the third country branches and the capital endowment and liquidity held by them ensure a sound management and coverage of their material risks and the viability of the branch.

3. Competent authorities shall conduct the review and evaluation referred to in paragraphs 1 and 2 in accordance with the principle of proportionality, as published in accordance with Article 143(1), point (c). In particular, competent authorities shall establish a frequency and intensity for the review referred to in paragraph 1 that is proportionate to the classification as class 1 and 2 third country branches and that takes into account other relevant criteria, such as the nature, scale and complexity of the third country branches' activities.

4. Where a review, in particular the evaluation of the governance arrangements, the business model, or the activities of a third country branch, gives competent authorities reasonable grounds to suspect that, in connection with that third country branch, money laundering or terrorist financing is being or has been committed or attempted, or there is increased risk thereof, the competent authority shall immediately notify EBA and the authority that supervises the third country branch in accordance with Directive (EU) 2015/849. Where there is an increased risk of money laundering or terrorist financing, the competent authority and the authority that supervises the third country branch in accordance with Directive (EU) 2015/849 shall liaise and notify their common assessment immediately to EBA. The competent authority shall take, as appropriate, measures in accordance with this Directive, which may include withdrawing the third country branch's permission in accordance with Article 48d(2), point (g).

5. Competent authorities, financial intelligence units and authorities that supervise third country branches shall cooperate closely with each other within their respective competences and shall exchange information relevant to this Directive, provided that such cooperation and information exchange do not impinge on an on-going inquiry, investigation or proceedings in accordance with the criminal or administrative law of the Member State where the competent authority, financial intelligence unit or authority entrusted with the public duty of supervising third country branches are located. EBA may assist the competent authorities and the authorities in charge of supervising the third country branch in accordance with Directive (EU) 2015/849 in the event of a disagreement concerning the coordination of supervisory activities under this Article on its own initiative. In such an event, EBA shall act in accordance with Article 19(1), second subparagraph, of Regulation (EU) No 1093/2010.

6. EBA shall develop draft regulatory technical standards to further specify:

(a) the common procedures and methodologies for the supervisory review and evaluation process referred to in this Article and for the assessment of the treatment of material risks;

(b) the mechanisms for cooperation and information exchange between the authorities referred to in paragraph 5 of this Article, in the context of identifying serious breaches of anti-money laundering rules.

For the purposes of point (a), the procedures and methodologies referred to therein shall be laid down in a manner that is proportionate to the classification of the third country branches as class 1 or class 2, and to other appropriate criteria such as the nature, scale and complexity of their activities.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 12 months from the date of entry into force of this amending Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 48p

Supervisory measures and powers

1. Competent authorities shall require third country branches to take the necessary measures at an early stage in order to:

(a) ensure that the third country branches comply with the requirements that apply to them under this Directive and under national law or to restore compliance with those requirements; and

(b) to ensure that the material risks that the third country branches are exposed to are covered and managed in a sound and sufficient manner and that those branches remain viable.

2. Competent authorities’ powers for the purposes of paragraph 1 shall include, at least, the power to require third country branches to:

(a) hold an amount of capital endowment in excess of the minimum requirements laid down in Article 48e or to comply with other additional capital requirements. Any additional capital endowment amount to be held by the third country branch in accordance with this point shall comply with the requirement laid down in Article 48e;

(b) meet other specific liquidity requirements in addition to the requirement laid down in Article 48f. Any additional liquid assets to be held by the third country branch in accordance with this point shall comply with the requirements laid down in Article 48f;

(c) reinforce their governance, risk control or booking arrangements;

(d) restrict or limit the scope of their business or of the activities they conduct, as well as the counterparties to those activities;

(e) reduce the risk inherent in their activities, products and systems, including outsourced activities, and stop engaging or offering such activities or products;

(f) comply with additional reporting requirements in accordance with Article 48l(3) or increase the frequency of the regular reporting;

(g) make public disclosures.

Article 48q

Cooperation between competent authorities and colleges of supervisors

1. Competent authorities supervising third country branches and subsidiary institutions of the same third-country group shall cooperate closely and share information with each other. The competent authorities shall have written coordination and cooperation arrangements in place in accordance with article 115.

2. For the purposes of paragraph 1, class 1 third country branches shall be subject to the comprehensive supervision of a college of supervisors in accordance with Article 116, subject to the following requirements:

(a) where a college of supervisors has been established in relation to the subsidiary institutions of a third country group, the class 1 third country branches of the same group shall be included within the scope of that college of supervisors;

(b) where the third country group has class 1 third country branches in more than one Member State but no subsidiary institutions in the Union subject to Article 116, a college of supervisors shall be established in relation to those class 1 third country branches;

(c) where the third country group has class 1 third country branches in more than one Member State or at least one class 1 third country branch, and one or more subsidiary institution~~s~~ in the Union that are not subject to Article 116, a college of supervisors shall be established in relation to those third country branches and subsidiary institutions.

3. For the purposes of paragraph 2, points (b) and (c), there shall be a lead competent authority that performs the same role as the consolidating supervisor in accordance with Article 116. The lead competent authority shall be that of the Member State with the largest third country branch in terms of total value of booked assets.

4. In addition to the tasks set out in Article 116, the colleges of supervisors shall:

(a) prepare a report on the structure and activities of the third country group in the Union and update this report on an annual basis;

(b) exchange information on the results of the supervisory review and evaluation process referred to in Article 48o;

(c) endeavour to align the application of the supervisory measures and powers referred to in Article 48p.

5. The college of supervisors shall ensure appropriate coordination and cooperation with relevant third country supervisory authorities where appropriate.

6. EBA shall contribute to promoting and monitoring the efficient, effective and consistent functioning of the colleges of supervisors referred to in this Article in accordance with Article 21 of Regulation (EU) No 1093/2010.

7. EBA shall develop draft regulatory technical standards to specify:

(a) the mechanisms of cooperation and the draft model agreements between competent authorities for the purposes of paragraph 1 of this Article; and

(b) the conditions for the functioning of colleges of supervisors for the purposes of Articles 2 to 6 of this Article.

EBA shall submit those draft technical standards to the Commission by [OP please insert the date = 12 months from the date of entry into force of this amending Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 48r

Reporting to the EBA

Competent authorities shall notify EBA the following:

(a) all the authorisations granted to third country branches and any subsequent changes to such authorisations;

(b) total assets and liabilities booked by the authorised third country branches, as periodically reported;

(c) the name of the third country group to which an authorised third country branch belongs.

EBA shall publish on its website a list of all third country branches authorised to operate in the Union in accordance with this Title, indicating the Member State in which they are authorised to operate.

CHAPTER 2

Relations with third countries

Article 48s

Cooperation with supervisory authorities of third countries regarding supervision on a consolidated basis

1. The Union may conclude agreements with one or more third countries regarding the means of exercising supervision on a consolidated basis over the following:

(a) institutions the parent undertakings of which have their head offices in a third country;

(b) institutions situated in third countries the parent undertakings of which, whether institutions, financial holding companies or mixed financial holding companies, have their head offices in the Union.

2. The agreements referred to in paragraph 1 shall, in particular, seek to ensure that:

(a) the competent authorities of Member States are able to obtain the information necessary for the supervision, on the basis of their consolidated financial situations, of institutions, financial holding companies and mixed financial holding companies situated in the Union which have as subsidiaries institutions or financial institutions situated in a third country, or holding participation therein;

(b) the supervisory authorities of third countries are able to obtain the information necessary for the supervision of parent undertakings the head offices of which are situated within their territories and which have as subsidiaries institutions or financial institutions situated in one or more Member States or holding participation therein; and

(c) the EBA is able to obtain from the competent authorities of the Member States the information received from national authorities of third countries in accordance with Article 35 of Regulation (EU) No 1093/2010.

3. Without prejudice to Article 218 TFEU, the Commission shall, with the assistance of the European Banking Committee, examine the outcome of the negotiations referred to in paragraph 1 and the resulting situation.

4. EBA shall assist the Commission for the purposes of this Article in accordance with Article 33 of Regulation (EU) No 1093/2010.;

(9) Articles 65 and 66 are replaced by the following:

'*Article 65*

Administrative penalties, periodic penalty payments and other administrative measures

1. Without prejudice to the supervisory powers of competent authorities referred to in Article 64 and the right of Member States to provide for and impose criminal penalties, Member States shall lay down rules on administrative penalties, periodic penalty payments and other administrative measures in respect of breaches of national provisions transposing this Directive and of Regulation (EU) No 575/2013, and shall take all measures necessary to ensure that they are implemented. The administrative penalties, periodic penalty payments and other administrative measures shall be effective, proportionate and dissuasive..

2. Member States shall ensure that where the obligations referred to in paragraph 1 apply to institutions, financial holding companies and mixed financial holding companies in the event of a breach of national provisions transposing this Directive or of Regulation (EU) No 575/2013, administrative penalties, periodic penalty payments and other administrative measures may be applied, subject to the conditions laid down in national law, to the members of the management body and to other natural persons who under national law are responsible for the breach.

3. The application of periodic penalty payments shall not prevent competent authorities from imposing administrative penalties for the same breach.

4. Competent authorities shall have all information gathering and investigatory powers that are necessary for the exercise of their functions. Those powers shall include:

(a) the power to require the following natural or legal persons to provide all information that is necessary in order to carry out the tasks of the competent authorities, including information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes:

(i) institutions established in the Member State concerned;

(ii) financial holding companies established in the Member State concerned;

(iii) mixed financial holding companies established in the Member State concerned;

(iv) mixed-activity holding companies established in the Member State concerned;

(v) persons belonging to the entities referred to in points (i) to (iv);

(vi) parties to whom the entities referred to in points (i) to (iv) have outsourced operational functions or activities;

(b) the power to conduct all necessary investigations of any person referred to in points (a)(i) to (vi) established or located in the Member State concerned where necessary to carry out the tasks of the competent authorities, including the power to:

(i) require the submission of documents;

(ii) examine the books and records of the persons referred to in points (a)(i) to (vi) and take copies or extracts from such books and records;

(iii) obtain written or oral explanations from any person referred to in points (a)(i) to (vi) or their representatives or staff;

(iv) interview any other person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation; and

(v) the power, subject to other conditions set out in Union law, to conduct all necessary inspections at the business premises of the legal persons referred to in points (a)(i) to (vi) and any other undertaking included in consolidated supervision where a competent authority is the consolidating supervisor, subject to the prior notification of the competent authorities concerned. If an inspection requires authorisation by a judicial authority under national law, such authorisation shall be applied for.';

5. By way of derogation from paragraph 1, where the legal system of the Member State does not provide for administrative penalties, this Article may be applied in such a manner that the penalty is initiated by the competent authority and imposed by judicial authorities, while ensuring that those legal remedies are effective and have an equivalent effect to the administrative penalties imposed by competent authorities. In any event, the penalties imposed shall be effective, proportionate and dissuasive. Those Member States shall notify to the Commission the provisions of their laws which they adopt pursuant to this paragraph by [OP please insert date = date of transposition of this amending Directive] and, without delay, any subsequent amendment law or amendment affecting them.

Article 66

Administrative penalties, periodic penalty payments and other administrative measures for breaches of authorisation and requirements for acquisitions or divesture of qualifying holdings, material transfers of assets and liabilities, mergers or divisions

1. Member States shall ensure that their laws, regulations and administrative provisions provide for administrative penalties, periodic penalty payments and other administrative measures at least where:

(a) the business of taking deposits or other repayable funds from the public is conducted without being authorised as a credit institution in breach of Article 9;

(b) activities as a credit institution are commenced without obtaining prior authorisation in breach of Article 9;

(c) a qualifying holding in a credit institution is acquired, directly or indirectly, or further increased, directly or indirectly, such that the proportion of the voting rights or of the capital held would reach or exceed the thresholds referred to in Article 22(1) or the credit institution would become the subsidiary of the acquirer, without notifying in writing the competent authorities of the credit institution in relation to which the acquirer seeks to acquire or increase the qualifying holding, during the assessment period, or against the opposition of the competent authorities, in breach of that Article;

(d) a qualifying holding in a credit institution is disposed of, directly or indirectly or reduced as a result of which the proportion of the voting rights or of the capital held would fall below the thresholds referred to in Article 25 or the credit institution would cease to be a subsidiary of the acquirer, without notifying in writing the competent authorities in breach of that Article ;

(e) a financial holding company or mixed financial holding company as defined in article 21a(1) fail to apply for approval in breach of Article 21a or breaches any other requirement set out in that Article;

(f) an acquirer as defined in Article 27a(1) acquires directly or indirectly, a qualifying holding in an institution, or increases an already held qualifying holding, such that the proportion of voting rights or capital held by the acquirer in the institution would exceed 15% of the institution's eligible capital without the acquirer's notifying the competent authorities in breach of that Article;

(g) any of the parties referred to in Article 27d of this Directive disposes directly or indirectly of a qualifying holding that exceeds the threshold referred to in Article 89 of Regulation (EU) 575/2013 without notifying the competent authorities in breach of Article 27d of this Directive;

(h) any of the parties referred to in Article 27f(1) executes a material transfer of assets and liabilities without notifying the competent authorities in breach of that Article;

(i) any of the parties referred to in Article 27k(l) engages in a process of merger or division in breach of that Article.

2. Member States shall ensure that in the cases referred to in paragraph 1, the measures that can be applied include the following:

(a) administrative penalties:

   (i) in the case of a legal person, administrative pecuniary penalties of up to 10 % of the total annual net turnover of the undertaking;

   (ii) in the case of a natural person, administrative pecuniary penalties of up to EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 July 2013;

   (iii) administrative pecuniary penalties of up to twice the profits gained or losses avoided because of the breach where those can be determined;

(b) periodic penalty payments:

   (i) in the case of a legal person, periodic penalty payments of up to 5 % of the average daily turnover which, in the case of an ongoing breach, the legal person shall be obliged to pay per day of infringement until compliance with an obligation is restored, and which may be imposed for a period of up to six months from the date stipulated in the decision requiring the termination of a breach and imposing the periodic penalty payment;

   (ii) in the case of a natural person, periodic penalty payments of up to EUR 500 000 which, in the case of an ongoing breach, the natural person shall be obliged to pay per day of infringement until compliance with an obligation is restored, and which may be imposed for a period up to six months from the date stipulated in the decision requiring the termination of a breach and imposing the periodic penalty payment;

(c) other administrative measures:

(i) a public statement which identifies the natural person, institution, financial holding company or mixed financial holding company, intermediate parent undertaking responsible and the nature of the breach;

(ii) an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;

(iii) suspension of the voting rights of the shareholder or shareholders held responsible for the breaches referred to in paragraph 1;

(iv) subject to Article 65(2), a temporary or a definitive ban of a member of the institution's management body or any other natural person who is held responsible for the infringement from exercising functions in the institution.

3. The total annual net turnover referred to in paragraph 2, points (a)(i) and (b)(i), of this Article shall be equal to the business indicator set out in Article 314 of Regulation (EU) No 575/2013. For the purposes of this Article, the business indicator shall be calculated on the basis of the most recent available yearly supervisory financial information, unless the result is zero or negative. If the result is zero or negative, the basis for the calculation shall be the most recent earlier yearly supervisory financial information which produces an indicator above zero. Where the undertaking concerned is part of a group the relevant total annual net turnover shall be the total annual net turnover resulting from the consolidated account of the ultimate parent undertaking.

4. The average daily turnover referred to in paragraph (2), point (b)(i), shall be the total annual net turnover referred to in paragraph 3 divided by 365.';

(10) Article 67 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) points (d) and (e) are replaced by the following:

'(d) an institution fails to have in place governance arrangements and gender neutral remuneration policies required by the competent authorities in accordance with Article 74;

(e) an institution fails to report information or provides incomplete or inaccurate information regarding compliance with the obligation to meet own funds requirements set out in Article 92 of Regulation (EU) No 575/2013 to the competent authorities in breach of Article 430(1) of that Regulation;';

(ii) point (j) is replaced by the following:

'(j) an institution fails to maintain a net stable funding ratio in breach of Article 413 or 428b of Regulation (EU) No 575/2013 or repeatedly and persistently fails to hold liquid assets in breach of Article 412 of that Regulation;';

(iii) the following points (r) to (ab) are added:

'(r) an institution fails to meet the own fund requirements set out in Article 92(1) of Regulation (EU) No 575/2013;

(s) an institution or a natural person fails to comply with an obligation arising from a decision issued by the competent authority or an obligation arising from national provisions transposing Directive 2013/36/EU or from Regulation (EU) No 575/2013;

(t) an institution that fails to comply with the remuneration requirements in accordance with Articles 92, 94 and 95 of this Directive;

(u) an institution acts without the prior permission of the competent authority where national provisions transposing Directive 2013/36/EU or Regulation (EU) No 575/2013 require the institution to obtain such prior permission or obtained such permission on the basis of its own false statement or does not comply with the conditions under which such permission was granted;

(v) an institution fails to meet the requirements in relation to composition, conditions, adjustments and deductions related to own funds as set out in Part Two of Regulation (EU) No 575/2013;

(w) an institution fails to meet the requirements in relation to its large exposures to a client or group of connected clients set out in Part Four of Regulation (EU) No 575/2013;

(x) an institution fails to meet the requirements in relation to the calculation of the leverage ratio, including the application of derogations set out in Part Seven of Regulation (EU) No 575/2013;

(y) an institution fails to report information or provides incomplete or inaccurate information to the competent authorities in relation to the data referred to in Articles 430(1), (2) and (3) and in Articles430a and 430b of Regulation (EU) No 575/2013;

(z) an institution fails to comply with the data collection and governance requirements set out in Part Three, Title III, Chapter 2 of Regulation (EU) No 575/2013.

(aa) an institution fails to meet the requirements in relation to the calculation of the risk-weighted exposure amounts or own funds requirements or fails to have in place the governance arrangements set out in Part Three, Title II to VI of Regulation (EU) No 575/2013;

(ab) an institution fails to meet the requirements in relation to the calculation of the liquidity coverage ratio or the net stable funding ratio as set out in Part Six, Title I and Title IV of Regulation (EU) No 575/2013 and the delegated act referred to in Article 460(1) of that Regulation.';

(b) paragraph 2 is replaced by the following:

'2. Member States shall ensure that in the cases referred to in paragraph 1, the measures than can be applied include at least the following:

(a) administrative penalties:

(i) in the case of a legal person, administrative pecuniary penalties of up to 10 % of the total annual net turnover of the undertaking;

(ii) in the case of a natural person, administrative pecuniary penalties of up to EUR 5 000 000, or in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 July 2013;

(iii) administrative pecuniary penalties of up to twice the profits gained or losses avoided because of the breach where those can be determined;

(b) periodic penalty payments:

(i) in the case of a legal person, periodic penalty payments of up to 5 % of the average daily turnover which, in the case of an ongoing infringement, the legal person shall be obliged to pay per day of infringement until compliance with an obligation is restored, and which may be imposed for a period of up to six months from the date stipulated in the decision requiring the termination of a breach and imposing the periodic penalty payment. The average daily turnover referred to in this paragraph shall be the total annual net turnover divided by 365.

(ii) in the case of a natural person, periodic penalty payments of up to EUR 500 000 which, in the case of an ongoing infringement, the natural person shall be obliged to pay per day of infringement until compliance with an obligation is restored, and which may be imposed for a period up to six months from the date stipulated in the decision requiring the termination of a breach and imposing the periodic penalty payment;

(c) other administrative measures:

(i) a public statement which identifies the natural person, institution, financial holding company or mixed financial holding company, intermediate parent undertaking responsible and the nature of the breach;

(ii) an order requiring the natural or legal person responsible to cease the conduct and to desist from a repetition of that conduct;

(iii) in the case of an institution, withdrawal of the authorisation of the institution in accordance with Article 18;

(iv) subject to Article 65(2), a temporary or a definitive ban of a member of the institution's management body or any other natural person who is held responsible for the infringement from exercising functions in the institution;

(v) suspension of the voting rights of the shareholder or shareholders held responsible for the breaches referred to in paragraph 1.';

(c) the following paragraphs 3 and 4 are added:

'3. The total annual net turnover referred to in paragraph 2, points (a)(i) and (b)(i), of this Article shall be equal to the business indicator set out in Article 314 of Regulation (EU) No 575/2013. For the purpose of this Article, the business indicator shall be calculated on the basis of the most recent available yearly supervisory financial information, unless the result is zero or negative. If the result is zero or negative, the basis for the calculation shall be the most recent earlier yearly supervisory financial information, which produces an indicator above zero. Where the undertaking concerned is part of a group the relevant total annual net turnover shall be the total annual net turnover resulting from the consolidated account of the ultimate parent undertaking.

4. The average daily turnover referred to in paragraph (2), point (b)(i), shall be the total annual net turnover referred to in paragraph 3 divided by 365.'

(11) Article 70 is replaced by the following:

'Article 70

Effective application of administrative penalties and exercise of powers to impose penalties by competent authorities

1. Member States shall ensure that, when determining the type and level of administrative penalties or other administrative measures, the competent authorities shall take into account all relevant circumstances, including where appropriate:

(a) the gravity and the duration of the breach;

(b) the degree of responsibility of the natural or legal person responsible for the breach;

(c) the financial strength of the natural or legal person responsible for the breach, as indicated, including by the total turnover of a legal person or the annual income of a natural person;

(d) the importance of profits gained or losses avoided by the natural or legal person responsible for the breach, insofar as they can be determined;

(e) the losses for third parties caused by the breach, insofar as they can be determined;

(f) the level of cooperation of the natural or legal person responsible for the breach with the competent authority;

(g) previous breaches by the natural or legal person responsible for the breach;

(h) any potential systemic consequences of the breach.

(i) previous application of criminal penalties to the same natural or legal person responsible for the same breach.

2. In the exercise of their powers to impose penalties, competent authorities shall cooperate closely to ensure that penalties produce the results pursued by this Directive. They shall also coordinate their actions to prevent accumulation and overlap when applying penalties and administrative measures to cross-border cases. Competent authorities shall cooperate closely with judicial authorities when dealing with same cases.

3. Competent authorities may apply penalties in relation to the same natural or legal person responsible for the same acts or omissions in the case of an accumulation of administrative and criminal proceedings and penalties is punishing the same breach. However, such accumulation of proceedings and penalties shall be strictly necessary and proportionate to pursue different and complementary objectives of general interest. The severity of all the penalties and other administrative measures imposed in case of accumulation of administrative and criminal proceedings shall be limited to what is necessary in the view of the seriousness of the breach concerned. Member

States shall lay down clear and precise rules regarding the circumstances in which acts or and omissions may be subject to such accumulation of administrative and criminal proceedings and penalties.

4. Member States shall lay down rules providing for full cooperation between competent authorities and judicial authorities to ensure a sufficiently close connection in substance and time between administrative and criminal proceedings.

5. By 18 July 2029, EBA shall submit a report to the Commission on the cooperation between competent authorities and judicial authorities in the context of application of administrative penalties. In addition, EBA shall assess any divergences in the application of penalties between competent authorities in this respect. In particular, EBA shall assess:

(a) the level of cooperation between competent authorities and judicial authorities in the context of application of penalties;

(b) the level of cooperation between competent authorities in the context of penalties applicable to cross-border cases or in case of accumulation of administrative and criminal proceedings;

(c) the application and the level of protection of ne bis in idem principle with regards to administrative and criminal penalties by Member States;

(d) the application of the principle of proportionality when both penalties are imposed in case of accumulation of administrative and criminal proceedings;

(e) the exchange of information between competent authorities when dealing with cross border cases.';

(12) in Article 73, the first subparagraph is replaced by the following:

'Institutions shall have in place sound, effective and comprehensive strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that they consider adequate to cover the nature and level of the risks to which they are or might be exposed in the short, medium and long term time horizon, including environmental, social and governance risks.';"

(13) in Article 74, paragraph 1 is replaced by the following:

'1. Institutions shall have robust governance arrangements, which include:

(a) a clear organisational structure with well-defined, transparent and consistent lines of responsibility;

(b) effective processes to identify, manage, monitor and report the risks they are or might be exposed to in the short, medium and long term time horizon, including environmental, social and governance risks;

(c) adequate internal control mechanisms, including sound administration and accounting procedures;

(d) remuneration policies and practices that are consistent with and promote sound and effective risk management.

The remuneration policies and practices referred to in the first subparagraph shall be gender neutral.';

(14) Article 76 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall ensure that the management body approves and at least every two years reviews the strategies and policies for taking up, managing, monitoring and mitigating the risks the institution is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle, and those resulting from the current, short, medium and long-term impacts of environmental, social and governance factors.’;

(b) in paragraph 2 the following subparagraph is added:

‘Member States shall ensure that the management body develops specific plans and quantifiable targets to monitor and address the risks arising in the short, medium and long-term from the misalignment of the business model and strategy of the institutions, with the relevant Union policy objectives or broader transition trends towards a sustainable economy in relation to environmental, social and governance factors.’;

(c) paragraph 5 is replaced by the following:

‘5. Member States shall, in accordance with the proportionality requirement laid down in Article 7(2) of Commission Directive 2006/73/EC[*11], ensure that institutions have internal control functions independent from the operational functions and which shall have sufficient authority, stature, resources and access to the management body.

Member States shall ensure that the internal control functions ensure that all material risks are identified, measured and properly reported. They shall ensure that the internal control functions are actively involved in elaborating the institution's risk strategy and in all material risk management decisions and that the internal control functions can deliver a complete view of the whole range of risks of the institution.

Member States shall ensure that the internal control function can report directly to the management body in its supervisory function, independent from members of the management body in its management function or senior management, and can raise concerns and warn that body, where appropriate, where specific risk developments affect or may affect the institution, without prejudice to the responsibilities of the management body pursuant to this Directive and Regulation (EU) No 575/2013.

The heads of internal control functions shall be independent senior managers with distinct responsibility for the risk management, compliance and internal audit functions. Where the nature, scale and complexity of the activities of the institution do not justify to appoint a specific person for each internal control functions, another senior person within the institution may combine the responsibilities for those functions, provided there is no conflict of interest.

The heads of the internal control functions shall not be removed without prior approval of the management body in its supervisory function and shall be able to have direct access to the management body in its supervisory function where necessary.

[*11] Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as

regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 26).';

(15) Article 78 is amended as follows:

(a) the title is replaced by the following:

'**Supervisory benchmarking of approaches for calculating own funds requirements**';

(b) paragraph 1 is replaced by the following:

'1. Competent authorities shall ensure all of the following:

(a) that institutions permitted to use internal approaches for the calculation of risk weighted exposure amounts or own funds requirements report the results of their calculations for their exposures or positions that are included in the benchmark portfolios;

(b) that institutions using the alternative standardised approach set out in Part Three, Title IV, Chapter 1a of Regulation (EU) No 575/2013 report the results of their calculations for their exposures or positions that are included in the benchmark templates;

(c) that institutions permitted to use internal approaches under Part Three, Title II, Chapter 3 of Regulation (EU) No 575/2013, as well as significant institutions that apply the standardised approach under Part Three, Title II, Chapter 2 of that Regulation, report the results of the calculations of the approaches used for the purpose of determining the amount of expected credit losses for their exposures or positions that are included in the benchmark templates, where any of the following conditions is met:

(i) institutions prepare their accounts in conformity with the international accounting standards adopted in accordance with Article 6(2) of Regulation (EC) No 1606/2002;

(ii) institutions perform the valuation of assets and off-balance sheet items and the determination of their own funds in conformity with the international accounting standards pursuant to Article 24(2) of Regulation (EU) No 575/2013;

(iii) institutions perform the valuation of assets and off-balance sheet items in conformity with accounting standards under Directive 86/635/EEC[*12] and they use an expected credit loss model that is the same as the one used in international accounting standards adopted in accordance with Article 6(2) of Regulation (EC) No 1606/2002.

Institutions shall submit the results of their calculations referred to in the first subparagraph together with an explanation of the methodologies used to produce them and any qualitative information, as requested by EBA, that can explain the impact of these calculations on own funds requirements, to the competent authorities at least annually, but with the possibility for EBA to conduct the exercise biennially after the exercise has run five times.

(c) paragraph 3 is amended as follows:

(i) the introductory wording is replaced by the following:

'Competent authorities shall, on the basis of the information submitted by institutions in accordance with paragraph 1, monitor the range of risk weighted exposure amounts or own funds requirements, as applicable, for the exposures or transactions in the benchmark portfolio resulting from the approaches of those institutions. Competent authorities shall make an assessment of the quality of those approaches with the frequency referred to in paragraph 1, second subparagraph, paying particular attention to:';

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

'EBA shall produce a report to assist the competent authorities in the assessment of the quality of the approaches based on the information referred to in paragraph 2.';

(d) in paragraph 5, the introductory sentence is replaced by the following:

'The competent authorities shall ensure that their decisions on the appropriateness of corrective actions as referred to in paragraph 4, comply with the principle that such actions must maintain the objectives of the approaches within the scope of this Article and therefore do not:';

(e) paragraph 6 is replaced by the following:

'6. EBA may issue guidelines and recommendations in accordance with Article 16 of Regulation (EU) No 1093/2010 where it considers them necessary on the basis of the information and assessments referred to in paragraphs 2 and 3 of this Article in order to improve supervisory practices or practices of institutions with regard to the approaches within the scope of the supervisory benchmarking.';

(f) paragraph 8 is amended as follows:

(i) in the first subparagraph, the following point (c) is added:

'(c) the list of significant institutions referred to in paragraph 1, point (c).';

(ii) the following second subparagraph is inserted:

'For the purposes of point (c), when determining the list of significant institutions EBA shall take into account proportionality considerations.';

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*12 Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).

(16) paragraph 1 of Article 85 is amended as follows:

"1. Competent authorities shall ensure that institutions implement policies and processes to evaluate and manage the exposures to operational risk, including risks resulting from outsourcing, and to cover low-frequency high-severity events. Institutions shall articulate what constitutes operational risk for the purposes of those policies and procedures."

(17) a new Article 87a is inserted:

‘Article 87a

Environmental, social and governance risks

1. Competent authorities shall ensure that institutions have, as part of their robust governance arrangements including risk management framework required under Article 74(1), robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of environmental, social and governance risks over an appropriate set of time horizons.

2. The strategies, policies, processes and systems referred to in paragraph 1 shall be proportionate to the scale, nature and complexity of the environmental, social and governance risks of the business model and scope of the institution’s activities, and consider short, medium and a long-term horizon of at least 10 years.

3. Competent authorities shall ensure that institutions test their resilience to long-term negative impacts of environmental, social and governance factors, both under baseline and adverse scenarios within a given timeframe, starting with climate-related factors. For the testing, competent authorities shall ensure that institutions include a number of environmental, and social and governance scenarios reflecting potential impacts of environmental and social changes and associated public policies on the long-term business environment.

4. Competent authorities shall assess and monitor developments of institutions’ practices concerning their environmental, social and governance strategy and risk management, including the plans to be prepared in accordance with Article 76, as well as the progress made and the risks to adapt their business models to the relevant policy objectives of the Union or broader transition trends towards a sustainable economy, taking into account sustainability related product offering, transition finance policies, related loan origination policies, and environmental, social and governance related targets and limits.

5. EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, to specify:

(a) minimum standards and reference methodologies for the identification, measurement, management and monitoring of environmental, social and governance risks;

(b) the content of plans to be prepared in accordance with Article 76, which shall include specific timelines and intermediate quantifiable targets and milestones, in order to address the risks from misalignment of the business model and strategy of institutions with the relevant policy objectives of the Union, or broader transition trends towards a sustainable economy in relation to environmental, social and governance factors;

(c) qualitative and quantitative criteria for the assessment of the impact of environmental, social and governance risks on the financial stability of institutions in the short, medium and long term;

(d) criteria for setting the scenarios and methods referred to in paragraph 3, including the parameters and assumptions to be used in each of the scenarios and specific risks.

EBA shall publish those guidelines by [OP please insert the date = 18 months from date of entry into force of this amending Directive]. EBA shall update those guidelines on a regular basis, to reflect the progress made in measuring and managing environmental, social and governance factors as well as the developments of policy objectives of the Union on sustainability.';

(18) Article 88 is amended as follows:

(a) in paragraph 1, point (e) is replaced by the following:

'(e) the chairman of the management body in its supervisory function of an institution may not exercise simultaneously the functions of a chief executive officer within the same institution.';

(b) in Article 88, the following paragraph 3 is added:

'3. Member States shall ensure that institutions draw up, maintain and update individual statements setting out the roles and duties of each member of the management body, senior management and key function holders and a mapping of duties, including details of the reporting lines and the lines of responsibility, and the persons who are part of the governance arrangements as referred to in Article 74 (1) and their duties approved by the management body.

Member States shall ensure that the statements of duties and the mapping of the duties are made available and communicated in due time, upon request, to the competent authorities.

EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, ensuring the implementation of this paragraph and its consistent application. EBA shall issue those guidelines by [OP please insert the date = 12 months from date of entry into force of this amending Directive].'

(19) Article 91 is replaced by the following:

'Article 91

Suitability criteria for members of the management body of the entities

1. Institutions and financial holding companies and mixed financial holding companies, as approved pursuant to Article 21a(1),("the entities"), shall have the primary responsibility for ensuring that members of the management body are at all times of good repute and possess sufficient knowledge, skills and experience to perform their duties and fulfil the requirements set out in paragraphs 2 to 8 of this Article.

Competent authorities shall in particular verify whether the criteria and requirements set out in the first subparagraph of this Article are still fulfilled where they have reasonable grounds to suspect that money laundering or terrorist financing within the meaning of Article 1 of Directive (EU) 2015/849 is being or has been committed or attempted, or there is increased risk thereof in connection with that institution.

2. Each member of the management body shall commit sufficient time to perform his or her functions in the entities.

3. Each member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making. Being a member of the management body of a credit institution permanently affiliated to a central body shall not in itself constitute an obstacle for acting with independence of mind.

4. The management body shall possess collective knowledge, skills and experience to be able to adequately understand the institution's activities, as well as the associated risks it is exposed to, in the short, medium and long term, taking into account the environmental, social and governance factors. The overall composition of the management body shall reflect an adequately broad range of experience.

5. The number of directorships which a member of the management body may hold simultaneously shall take into account individual circumstances and the nature, scale and complexity of the institution's activities. Unless where members of the management body represent the interests of a Member State, members of the management body of an institution that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities shall, from 1 July 2014, not hold more than one of the following combinations of directorships simultaneously:

(a) one executive directorship with two non-executive directorships;

(b) four non-executive directorships.

6. For the purposes of paragraph 5, the following shall count as a single directorship:

(a) executive or non-executive directorships held within the same group.

(b) executive or non-executive directorships held within either of the following:

(i) institutions which are members of the same institutional protection scheme provided that the conditions set out in Article 113(7) of Regulation (EU) No 575/2013 are fulfilled;

(ii) undertakings, including non-financial entities, in which the institution holds a qualifying holding.

For the purposes of point (a) of this paragraph, a group shall mean a group of undertakings that are related to each other as set out in Article 22 of Directive 2013/34/EU of the European Parliament and of the Council[*13].

7. Directorships in organisations which do not pursue predominantly commercial objectives shall not count for the purposes of paragraph 5.

8. Competent authorities may authorise members of the management body to hold one non-executive directorship on top of the directorships referred to in paragraph 5, points (a) and (b).

9. The entities shall devote adequate human and financial resources to the induction and training of members of the management body.

10. Member States or competent authorities shall require entities and their respective nomination committees, where established, to engage a broad set of qualities and competences when recruiting members to the management body and for that purpose to put in place a policy promoting diversity in the management body.

11. Competent authorities shall collect the information disclosed in accordance with Article 435(2), point (c), of Regulation (EU) No 575/2013 and shall use that information to benchmark diversity practices. Competent authorities shall provide EBA with that information. EBA shall use that information to benchmark diversity practices at Union level.

12. EBA shall issue guidelines on the following:

(a) the notion of sufficient time commitment of a member of the management body to perform his or her functions, in relation to the individual circumstances and the nature, scale and complexity of activities of the institution;

(b) the notions of honesty, integrity and independence of mind of a member of the management body as referred to in paragraph 3;

(c) the notion of adequate collective knowledge, skills and experience of the management body as referred to in paragraph 4;

(d) the notion of adequate human and financial resources devoted to the induction and training of members of the management body as referred to in paragraph 9;

(e) the notion of diversity to be taken into account for the selection of members of the management body as referred to in paragraph 10;

EBA shall issue those guidelines by [OP please insert the date = 12 months from date of entry into force of this amending Directive].

13. This Article and Articles 91a to 91d shall be without prejudice to provisions of the Member States on the representation of employees in the management body.';

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*13 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council (OJ L 182, 29.6.2013)

(20) the following Articles 91a to 91d are inserted:

'Article 91a

Suitability assessment of members of the management body by the entities

1. The entities as referred to in Article 91(1) shall ensure that members of the management body fulfil the criteria and requirements set out in Article 91(1) to (8) at all times.

2. The entities shall assess the suitability of members of the management body before those members take up their positions. Where the entities conclude, based on the suitability assessment, that the member concerned does not fulfil the criteria and requirements set out in paragraph 1, the entities shall ensure that the member concerned does not take up the position considered.

However, where it is strictly necessary to replace a member of the management body immediately, the entities may assess the suitability of such replacement members after they have taken up their positions. The entities shall be able to duly justify such immediate replacement.

3. The entities shall ensure that information about the suitability of the members of the management body remains up-to-date. Where requested, the entities shall communicate that information to the competent authorities.

4. The entities that renew the mandate of members of the management body shall inform in writing the competent authorities within 15 working days of the date of that renewal of the mandate.

Article 91b

Suitability assessment of members of the management body of the entities by competent authorities

1. Member States shall ensure that competent authorities assess whether members of the management body of the entities as referred to in Article 91(1) fulfil the criteria and requirements set out in Article 91(1) to (8) at all times.

2. For the assessment referred to in paragraph 1, the entities shall submit the initial application of the relevant member of the management body to the competent authorities without undue delay after the internal suitability assessment is completed. That application shall be accompanied by all the information and documentation necessary for competent authorities to carry out the suitability assessment effectively.

3. Competent authorities shall acknowledge in writing the receipt of the application and the documentation required in accordance with paragraph 2 within two working days.

Competent authorities shall complete the assessment referred to in paragraph 1 within 80 working days (‘assessment period’) as from the date of the written acknowledgement referred to in the first subparagraph of this paragraph.

4. Competent authorities that request from the entities additional information or documentation, including interviews or hearings, may extend the assessment period for a maximum of 40 working days. However, the assessment period shall not exceed 120 working days. Request for additional information or documentation shall be made in writing and shall be specific. The entities shall acknowledge receipt of request for additional information or documentation within two working days and provide the requested additional information or documentation within 10 working days as of the date of the written acknowledgement of the request from competent authorities.

5. As soon as any new facts or other issues that may affect the suitability of the member of the management body are known to the entities or the relevant member of the management body, the entities shall inform without undue delay the relevant competent authorities thereof.

6. Competent authorities shall not reassess the suitability of members of the management body when their mandate is renewed, unless relevant information that is known to competent authorities has changed and such change may affect the suitability of the member concerned.

7. Where members of the management body do not fulfil the requirements set out in Article 91(1) to (8) at all times or where the entities do not comply with the obligations and deadlines laid down in paragraphs 2 or 4 of this Article, Member States shall ensure that competent authorities have the necessary powers to:

(a) prevent such members to be part of the management body;

(b) remove such members from the management body;

(c) require the entities concerned to take the measures necessary to ensure that such member is suitable for the position concerned.

8. In accordance with paragraphs 1 to 7, competent authorities shall carry out the suitability assessment before members of the management body take up their positions in the following entities:

(a) the EU parent institution that qualifies as large institution;

(b) the parent institution in a Member State that qualifies as large institution;

(c) central body that qualifies as large institution or that supervises large institutions affiliated to it;

(d) stand-alone institution in the EU that qualifies as large institution;

(e) relevant subsidiary;

(f) the parent financial holding companies in a Member State, parent mixed financial holding companies in a Member State, EU parent financial holding companies and EU parent mixed financial holding companies, having large institutions or relevant subsidiaries within their group.

However, where it is strictly necessary to replace a member of the management body immediately, competent authorities may carry out the suitability assessment of members of the management body after they take up their positions. The entities shall be able to duly justify such immediate replacement.

9. For the purposes of paragraph 2, EBA shall develop draft regulatory technical standards specifying information or accompanying documents required to be submitted to the competent authorities for performing the suitability assessment.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 12 months from the date of entry into force of this amending Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

10. EBA shall develop draft implementing technical standards on standard forms, templates and procedures for the provision of the information referred to in paragraph 2.

EBA shall submit those draft implementing technical standards to the Commission by [OP please insert the date = 12 months from the date of entry into force of this amending Directive].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Article 91c

Suitability criteria and assessment by the entities of key function holders

1. The entities as referred to in Article 91(1) shall have the primary responsibility for ensuring that key function holders are of good repute, have honesty and integrity and possess the knowledge, skills and experience necessary to perform their duties at all times.

2. Where the entities conclude, based on the assessment referred to in paragraph 1, that the person does not fulfil the requirements set out in that paragraph, they shall not appoint that person as a key function holder. The entities shall take all measures necessary to ensure the appropriate functioning of that position.

3. The entities shall ensure that information about the suitability of the key function holders remains up-to-date. Where requested, the entities shall communicate that information to competent authorities.

Article 91d

Suitability assessment by competent authorities of the heads of internal control functions and chief financial officer

1. Member States shall ensure that competent authorities assess before the heads of internal control functions and the chief financial officer take up their positions whether they fulfil the suitability criteria set out in Article 91c(1), where those heads or officer are to be appointed for roles in the following entities:

(a) the EU parent institution that qualifies as large institution;

(b) the parent institution in a Member State that qualifies as large institution;

(c) central body that qualifies as large institution or that supervises large institutions affiliated to it;

(d) stand-alone institution in the EU that qualifies as a large institution;

(e) relevant subsidiary.

2. For the assessment of the suitability of the heads of internal control functions and chief financial officer as referred to in paragraph 1, the entities referred to in that paragraph shall submit the initial application of the person concerned to the competent authorities without undue delay after the internal suitability assessment is completed. That application shall be accompanied by all the information and documentation necessary to competent authorities to carry out the suitability assessment effectively.

3. Competent authorities shall acknowledge in writing the receipt of the application and the documentation required in accordance with paragraph 2 within two working days.

Competent authorities shall assess the suitability of the heads of internal control functions and chief financial officer within 80 working days ('assessment period') as from the date of the written acknowledgement referred to in the first subparagraph.

4. Competent authorities that request from the entities referred to paragraph 1 additional information or documentation, including interviews or hearings, may extend the assessment period for maximum 40 working days. However, the assessment period shall not exceed 120 working days. Request for additional information or documentation shall be made in writing and shall be specific. The entities referred to paragraph 1 shall acknowledge receipt of request for additional information or documentation within two working days and provide the requested additional information or documentation within 10 working days as of the date of the written acknowledgement of the request from competent authorities.

5. As soon as any new facts or other issues that may affect the suitability of the member of the management body are known to the entities referred to in paragraph 1 or the relevant member of the management body, the entities referred to in that paragraph shall inform without undue delay the relevant competent authorities thereof.

6. Where the heads of internal control functions and chief financial officer do not fulfil the requirements set out in Article 91c(1), or where the entities referred to paragraph 1 of this Article do not comply with the obligations and deadlines in paragraphs 2 and 4 of this Article, Member States shall ensure that competent authorities have the necessary powers to:

(a) prevent such heads or officer to exercise their functions;

(b) remove such heads or officer;

(c) require the entities referred to paragraph 1 to take the appropriate measures to ensure that such heads or officer concerned are suitable for the position considered.

7. For the purposes of this Article, EBA shall develop draft regulatory technical standards specifying information or accompanying documents required to be submitted to the competent authorities for performing the suitability assessment.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 12 months after the date of entry into force of this amending Directive].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

8. EBA shall develop draft implementing technical standards on standard forms, templates and procedures for the provision of the information referred to in paragraph 2.

EBA shall submit those draft implementing technical standards to the Commission by [OP please insert the date = 12 months from date of entry into force of this amending Directive].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

9. EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, facilitating the implementation and consistent application of procedural requirements laid down in Articles 91a to 91d of this Directive and the application of powers and actions to be taken by the competent authorities referred to in Article 91b(7) and 91d(6) of this Directive. EBA shall issue those guidelines by [OP-please insert the date = 12 months from date of entry into force of this Directive].';

(22) Article 92 is amended as follows:

(a) in paragraph 2, points (e) and (f) are replaced by the following:

'(e) staff engaged in internal control functions are independent from the business units they oversee, have appropriate authority, and are remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control;

(f) the remuneration of the senior staff in the internal control functions is directly overseen by the remuneration committee referred to in Article 95 or, if such a committee has not been established, by the management body in its supervisory function;';

(b) in paragraph 3, point (b) is replaced by the following:

'(b) staff members with managerial responsibility over the institution's internal control functions or material business units;';

(23) Article 94 is amended as follows:

(a) in paragraph 1, point (g)(ii), the fifth indent is replaced by the following:

‘- the institution shall, without delay, inform the competent authority of the decisions taken by its shareholders or owners or members, including any approved higher maximum ratio pursuant to the first subparagraph of this point, and the competent authorities shall use the information received to benchmark the practices of institutions in that regard. The competent authorities shall provide EBA with the benchmarks and EBA shall publish them on an aggregate home Member State basis in a common reporting format. EBA may elaborate guidelines to facilitate the implementation of this indent and to ensure the consistency of the information collected;’;

(b) in paragraph 2, third subparagraph, point (a) is replaced by the following:

‘(a) managerial responsibility and internal control functions;’;

(c) in paragraph 3, point (a) is replaced by the following:

‘(a) an institution that is not a large institution and the value of the assets of which is on average and on an individual basis in accordance with this Directive and Regulation (EU) No 575/2013 equal to or less than EUR 5 billion over the four-year period immediately preceding the current financial year;’;

(24) in Article 98, the following paragraph 9 is added:

‘9. The review and evaluation performed by competent authorities shall include the assessment of institutions’ governance and risk management processes for dealing with environmental, social and governance risks, as well as of the institutions’ exposures to environmental, social and governance risks. In determining the adequacy of institutions’ processes and exposures, competent authorities shall take into account the business models of those institutions.’;

(25) in Article 100 the following paragraphs 3 and 4 are added:

‘3. Institutions and any third parties acting in a consulting capacity to institutions shall refrain from activities that can impair a stress test, such as benchmarking, exchange of information among themselves, agreements on common behaviour, or optimisation of their submissions in stress tests. Without prejudice to other relevant provisions laid down in this Directive and in Regulation (EU) No 575/2013, competent authorities shall have all information gathering and investigatory powers that are necessary to detect those actions.

4. EBA, EIOPA and ESMA shall, through the Joint Committee referred to in Article 54 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010, develop guidelines to ensure that consistency, long-term considerations and common standards for assessment methodologies are integrated into the stress testing of environmental, social and governance risks. Stress testing of environmental, social and governance risks by competent authorities should start with climate-related factors. EBA, EIOPA and ESMA shall, through the Joint Committee referred to in Article 54 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010, explore how social and governance related risks can be integrated into stress testing.’;

(26) Article 104 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the introductory sentence is replaced by the following:

‘For the purposes of Article 97, Article 98(4) and (5) and (9), Article 101(4) and Article 102 of this Directive and of the application of Regulation (EU) No 575/2013, competent authorities shall have at least the power to:’

(ii) the following point (m) is added:

‘(m) require institutions to reduce the risks arising from the institutions’ misalignment with relevant policy objectives of the Union and broader transition trends relating to environmental, social and governance factors over the short, medium and long term, including through adjustments to their business models, governance strategies and risk management.’;

(b) the following paragraph 3 is added:

‘3. EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, to specify how competent authorities may identify that the credit valuation adjustment (CVA) risks of institutions, referred to in Article 381 of Regulation (EU) No 575/2013, pose excessive risks to the soundness of those institutions.’;

(27) Article 104a is amended as follows:

(a) in paragraph 3, the second subparagraph is replaced by the following:

‘Where additional own funds are required to address the risk of excessive leverage not sufficiently covered by Article 92(1), point (d), of Regulation (EU) No 575/2013, competent authorities shall determine the level of the additional own funds required under paragraph 1, point (a), of this Article as the difference between the capital considered adequate pursuant to paragraph 2 of this Article, except for the fifth subparagraph thereof, and the relevant own funds requirements set out in Parts Three and Seven of Regulation (EU) No 575/2013.’;

(b) the following paragraphs 6 and 7 are added:

‘6. Where an institution becomes bound by the output floor, the following shall apply:

(a) the nominal amount of additional own funds required by the institution’s competent authority in accordance with Article 104(1), point (a), to address risks other than the risk of excessive leverage shall not increase as a result of the institutions’ becoming bound by the output floor;

(b) the institution’s competent authority shall, without undue delay, and no later than by the end date of the next review and evaluation process, review the additional own funds it required from the institution in accordance with Article 104(1), point (a), and remove any parts thereof that would double-count the risks that are already fully covered by the fact that the institution is bound by the output floor.

For the purposes of this Article and Articles 131 and 133 of this Directive, an institution shall be considered as bound by the output floor when the institution's total risk exposure amount calculated in accordance with Article 92(3), point (a), of Regulation (EU) No 575/2013 exceeds its un-floored total risk exposure amount calculated in accordance with Article 92(4) of that Regulation.

7. For the purposes of paragraph 2, as long as an institution is bound by the output floor, the institution's competent authority shall not impose an additional own funds requirement that would double-count the risks that are already fully covered by the fact that the institution is bound by the output floor.';

(28) in Article 106, paragraph 1 is replaced by the following:

'1. Member States shall empower the competent authorities to require institutions:

(a) to publish information referred to in Part Eight of Regulation (EU) No 575/2013 more than once per year, and to set deadlines for the submission of disclosure information by large and other institutions to EBA for its publication on a centralised EBA website;

(b) to use specific media and locations for publications other than the EBA website for centralised disclosures or the financial statements of institutions.';

(29) Article 121 is replaced by the following:

'Without prejudice to provisions applicable to financial holding company or mixed financial holding approved in accordance with Article 21a(1), Member States shall require that the members of the management body of a financial holding company or mixed financial holding, be of sufficiently good repute and possess sufficient knowledge, skills and experience as referred to in Article 91(1) to perform those duties, taking into account the specific role of a financial holding company or mixed financial holding company'.

(30) In Title VII, Chapter 3, the following Section 0 is inserted:

'SECTION 0

APPLICATION OF THIS CHAPTER TO INVESTMENT FIRM GROUPS

Article 110a

Scope of application to investment firm groups

This Chapter applies to investment firm groups, as defined in Article 4(1), point (25) of Regulation (EU) 2019/2033 of the European Parliament and of the Council[*], where at least one investment firm in that group is subject to Regulation (EU) No 575/2013 pursuant to Article 1(2) of Regulation (EU) 2019/2033[*14].

This Chapter does not apply to investment firm groups where no investment firm in that group is subject to Regulation (EU) No 575/2013 pursuant to Article 1(2) of Regulation (EU) 2019/2033.';

[*14] Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending

Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).';

(31) Article 131 is amended as follows:

(a) in paragraph 5, the following subparagraph is added:

'Where an O-SII becomes bound by the output floor, its competent or designated authority, as applicable, shall review the institutions O-SII buffer requirement to make sure that its calibration remains appropriate.';

(b) in paragraph 5a, the second sub-paragraph is replaced by the following:

'Within six weeks of receipt of the notification referred to in paragraph 7 of this Article, the ESRB shall provide the Commission with an opinion as to whether the O-SII buffer is deemed appropriate. EBA may also provide the Commission with its opinion on the buffer in accordance with Article 16a(1) of Regulation (EU) No 1093/2010.';

(c) in paragraph 15, the first subparagraph is replaced by the following:

'Where the sum of the systemic risk buffer rate as calculated for the purposes of paragraph 10, 11 or 12 of Article 133 and the O-SII buffer rate or the G-SII buffer rate to which the same institution is subject to would be higher than 5 %, the procedure set out in paragraph 5a of this Article shall apply. For the purposes of this paragraph, where the decision to set a systemic risk buffer, O-SII buffer or G-SII buffer results in a decrease or no change from any of the previously set rates, the procedure set out in paragraph 5a of this Article shall not apply.';

(32) Article 133 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Each Member State shall ensure that it is possible to set a systemic risk buffer of Common Equity Tier 1 capital for the financial sector or one or more subsets of that sector on all or a subset of exposures as referred to in paragraph 5 of this Article, in order to prevent and mitigate macroprudential or systemic risks not covered by Regulation (EU) No 575/2013 and by Articles 130 and 131 of this Directive, in the meaning of a risk of disruption in the financial system with the potential to have serious negative consequences to the financial system and the real economy in a specific Member State.';

(b) the following paragraph 2a is inserted:

'2a. Where an institution is bound by the output floor, both of the following shall apply:

(a) the amount of CET1 capital it is required to have in accordance with the first subparagraph shall be capped by the following amount:

$$r_T \cdot E_T^* + \sum_i r_i \cdot E_i^*$$

where:

E_T = the un-floored total risk exposure amount of the institution calculated in accordance with Article 92(4) of Regulation (EU) No 575/2013';

E_i = the un-floored risk exposure amount of the institution for the subset of exposures i calculated in accordance with Article 92(4) of Regulation (EU) No 575/2013;

r_T, r_i = r_T and r_i as defined in the first subparagraph.

(b) the competent or designated authority, as applicable, shall review without undue delay the calibration of the systemic risk buffer rate or rates, as applicable, to ensure they remain appropriate and do not double-count the risks that are already covered by the fact that the institution is bound by the output floor.

The calculation in point (a) shall apply until the designated authority has completed the revision set out in point (b) and has published a new decision on the calibration of the systemic risk buffer rate or rates in accordance with the procedure set out in this Article. As of that moment, the cap in point (a) shall no longer apply.';

(c) in paragraph 8, point (c) is replaced by the following:

'(c) the systemic risk buffer is not to be used to address any of the following:

(i) risks that are covered by Articles 130 and 131;

(ii) risks that are fully covered by the calculation set out in Article 92(3) of Regulation (EU) No 575/2013.';

(d) in paragraph 9, the following point (g) is added:

'(g) how the calculation set out in Article 92(3) of Regulation (EU) No 575/2013 affects the calibration of the systemic risk buffer rate or rates, as applicable, that the competent authority or the designated authority, as applicable, intends to impose.';

(e) paragraphs 11 and 12 are replaced by the following:

'11. Where the setting or resetting of a systemic risk buffer rate or rates on any set or subset of exposures referred to in paragraph 5 subject to one or more systemic risk buffers results in a combined systemic risk buffer rate at a level higher than 3 % and up to 5 % for any of those exposures, the competent authority or the designated authority of the Member State that sets that buffer shall request in the notification submitted in accordance with paragraph 9 the opinions of the Commission and the ESRB.

Within a month of receipt of the notification referred to in paragraph 9, the ESRB shall provide the Commission with an opinion as to whether the systemic risk buffer rate or rates is deemed appropriate. Within two months of receipt of the notification, the Commission, taking into account the assessment of the ESRB, shall provide its opinion as to whether it considers that the systemic risk buffer rate or rates do not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole forming or creating an obstacle to the proper functioning of the internal market.

Where the opinion of the Commission is negative, the competent authority or the designated authority, as applicable, of the Member State that sets that systemic risk buffer shall comply with that opinion or give reasons for not doing so.

Where one or more institutions to which one or more systemic risk buffer rates apply is a subsidiary the parent of which is established in another Member State, the ESRB and the Commission shall also consider in their opinions whether applying the systemic risk buffer rate or rates to those institutions is deemed appropriate.

Where the authorities of the subsidiary and of the parent disagree on the systemic risk buffer rate or rates applicable to that institution and in the case of a negative opinion of both the Commission and the ESRB, the competent authority or the designated authority, as applicable, may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010. The decision to set the systemic risk buffer rate or rates for those exposures shall be suspended until EBA has taken a decision.

For the purposes of this paragraph, the recognition of a systemic risk buffer rate set by another Member State in accordance with Article 134 shall not count towards the thresholds referred to in the first subparagraph of this paragraph.

12. Where the setting or resetting of a systemic risk buffer rate or rates on any set or subset of exposures referred to in paragraph 5 subject to one or more systemic risk buffers results in a combined systemic risk buffer rate higher than 5 % for any of those exposures, the competent authority or the designated authority, as applicable, shall seek the authorisation of the Commission before implementing a systemic risk buffer.

Within six weeks of receipt of the notification referred to in paragraph 9 of this Article, the ESRB shall provide the Commission with an opinion as to whether the systemic risk buffer is deemed appropriate. EBA may also provide the Commission with its opinion on that systemic risk buffer in accordance with Article 16a(1) of Regulation (EU) No 1093/2010, within six weeks of receipt of the notification.

Within three months of receipt of the notification referred to in paragraph 9, the Commission, taking into account the assessment of the ESRB and EBA, where relevant, and where it is satisfied that the systemic risk buffer rate or rates do not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole forming or creating an obstacle to the proper functioning of the internal market, shall adopt an act authorising the competent authority or the designated authority, as applicable, to adopt the proposed measure.

For the purposes of this paragraph, the recognition of a systemic risk buffer rate set by another Member State in accordance with Article 134 shall not count towards the threshold referred to in the first subparagraph of this paragraph.’;

(33) Article 142 is amended as follows:

(a) in paragraph 2, point (c) is replaced by the following:

‘(c) a plan and timeframe for the increase of own funds with the objective of meeting fully the combined buffer requirement or, where applicable, the leverage ratio buffer requirement;’;

(b) paragraph 3 is replaced by the following:

‘3. The competent authority shall assess the capital conservation plan, and shall approve the plan only if it considers that the plan, if implemented, would be reasonably likely to conserve or raise sufficient capital to enable the institution to meet its combined buffer requirement or, where applicable, its leverage ratio buffer requirement within a period which the competent authority considers appropriate.’;

(c) in paragraph 4, point (b) is replaced by the following:

‘(b) exercise its powers under Article 102 to impose more stringent restrictions on distributions than those required by Articles 141 and 141b, as applicable.’;

(34) in Article 161, paragraph 3 is deleted.

Article 2

Amendments to Directive 2014/59/EU

Directive 2014/59/EU[*15] is amended as follows:

(1) in Article 27, the following paragraphs 6, 7 and 8 are added:

‘6. When new members of the management body or senior management are appointed under this Article and Article 28 of this Directive, Member States shall ensure that competent authorities carry out the assessment of the members of the management body as required by Article 91b(1) of Directive 2013/36/EU and of the key function holders as required by Article 91d(1) of that Directive only after they take up their position.

Article 91a(2) and Article 91c(2) of Directive 2013/36/EU shall not apply to the appointment of new members of the management body or senior management referred to in the first subparagraph.

7. Competent authorities shall ensure that they perform the assessments referred to in paragraph 6 without undue delay. They shall complete the assessments at the latest 20 working days from the date they receive the notification of appointment.

8. Competent authorities shall inform the resolution authority without undue delay about the outcome of the assessments referred to in paragraph 6.’;

(2) in Article 34, the following paragraphs 7, 8 and 9 are added:

‘7. When new members of the management body or senior management are appointed under this Article and Article 63 of this Directive, Member States shall ensure that competent authorities carry out the assessment of the members of the management body as required by Article 91b(1) of Directive 2013/36/EU and of the key function holders as required by Article 91d(1) of that Directive only after they take up their position.

Article 91a(2) and Article 91c(2) of Directive 2013/36/EU shall not apply to the appointment of new members of the management body or senior management referred to in the first subparagraph.

The first and second subparagraphs shall also apply to the assessment of the members of the management body of the bridge institution appointed under Article 41 immediately after taking resolution action.

8. Competent authorities shall ensure that they perform the assessments referred to in paragraph 7 without undue delay. They shall complete the assessments at the latest 20 working days from the date they receive the notification of appointment.

9. Competent authorities shall inform the resolution authority without undue delay about the outcome of the assessments referred to in paragraph 7.';

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

Article 3

Transposition

1. Member States shall adopt and publish by [OP please insert the date = 18 months from the date of entry into force of this amending Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from [OP please insert the date = 1 day after the transposition date of this amending Directive].

However, the provisions necessary to comply with the amendments set out in Article 1, point (8), on the prudential supervision of third country branches shall apply from [OP please insert the date = 12 months from date of application of this amending Directive].

By derogation from the preceding subparagraph, Member States shall apply the provisions on reporting on third country branches in Title VI, Chapter 1, Section II, Sub-section 4 of Directive 2013/36/EU, as inserted by this Directive, from the date of application laid down in the second subparagraph of this Article.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

Entry into force

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

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament *The President*	*For the Council* *The President*

EUROPEAN
COMMISSION

Brussels, 27.10.2021
COM(2021) 664 final

2021/0342 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 575/2013 as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor

(Text with EEA relevance)

{SWD(2021) 320} - {SWD(2021) 321} - {SEC(2021) 380}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The proposed amendment to Regulation (EU) No 575/2013 (the Capital Requirements Regulation or CRR) is part of a legislative package that includes also amendments to Directive 2013/36/EU (the Capital Requirements Directive or CRD)[1].

In response to the Great Financial Crisis of 2008-09 (GFC), the Union implemented substantial reforms of the prudential framework applicable to banks in order to enhance their resilience and thus help prevent the recurrence of a similar crisis. Those reforms were largely based on international standards adopted since 2010 by the Basel Committee on Banking Supervision (BCBS)[2]. The standards are collectively known as the Basel III standards, the Basel III reforms or the Basel III framework[3].

The global standards developed by the BCBS have become increasingly important due to the ever more global and interconnected nature of the banking sector. While a globalised banking sector facilitates international trade and investment, it also generates more complex financial risks. Without uniform global standards, banks could choose to establish their activities in the jurisdiction with the most lenient regulatory and supervisory regimes. This might lead to a regulatory race to the bottom to attract bank businesses, increasing at the same time the risk of global financial instability. International coordination on global standards limits this type of risky competition to a large extent and is key for maintaining financial stability in a globalised world. Global standards also simplify the life of internationally active banks – among which are a good number of EU banks – as they guarantee that broadly similar rules are applied in the most important financial hubs worldwide.

The EU has been a key proponent of international cooperation in the area of banking regulation. The first set of post-crisis reforms that are part of the Basel III framework have been implemented in two steps:

- in June 2013 with the adoption of CRR[4] and CRD IV[5];
- in May 2019 with the adoption of Regulation (EU) 2019/876[6], also known as CRR II, and Directive (EU) 2019/878, also known as CRD V[7].

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1 COM(2021) 663.

2 Members of the BCBS comprise central banks and bank supervisors from 28 jurisdictions worldwide. Among the EU Member States, Belgium, France, Germany, Italy, Luxembourg, the Netherlands, and Spain, as well as the European Central Bank are members of the BCBS. The European Commission and the EBA participate in BCBS meetings as observers.

3 The consolidated Basel III framework is available at https://www.bis.org/bcbs/publ/d462.htm.

4 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 321, 26.6.2013, p. 6).

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

6 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 (CIU), large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012.

The reforms implemented so far focused on increasing the quality and quantity of regulatory capital that banks are required to have to cover potential losses. Furthermore, they aimed at reducing banks' excessive leverage, increasing institutions'[8] resilience to short-term liquidity shocks, reducing their reliance on short-term funding, reducing their concentration risk, and addressing too-big-to-fail problems[9].

As a result, the new rules strengthened the criteria for eligible regulatory capital, increased minimum capital requirements, and introduced new requirements for credit valuation adjustment[10] (CVA) risk and for exposures to central counterparties[11]. Furthermore, several new prudential measures were introduced: a minimum leverage ratio requirement, a short-term liquidity ratio (known as the liquidity coverage ratio), a longer-term stable funding ratio (known as the net stable funding ratio), large exposure limits[12] and macro-prudential capital buffers[13].

Thanks to this first set of reforms implemented in the Union[14], the EU banking sector has become significantly more resilient to economic shocks and entered the COVID-19 crisis on a significantly more stable footing when compared to its condition at the onset of the GFC.

In addition, temporary relief measures were taken by supervisors and legislators at the outset of the COVID-19 crisis. In its Interpretative Communication on the application of the accounting and prudential frameworks to facilitate EU bank lending supporting businesses and households amid COVID-19 of 28 April 2020[15], the Commission confirmed the flexibility embedded in the prudential and accounting rules as highlighted by the European Supervisory Authorities and international bodies. On that basis, in June 2020, the co-legislators adopted targeted temporary amendments to specific aspects of the prudential framework – the so-called CRR "quick fix" package[16]. Together with resolute monetary and fiscal policy measures[17], this helped institutions to keep on lending to households and companies during the pandemic. This, in turn, helped mitigate the economic shock[18] resulting from the pandemic.

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7 Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures.

8 Originally, the CRR applied to both credit institutions (i.e. banks) and investment firms, commonly referred to as 'institutions'. With the entry into application of Regulation (EU) 2019/2033, the personal scope of the CRR – and with it the definition of 'institution' – was limited to credit institutions and investment firms that carry out certain types of activities and have to obtain a bank license.

9 See https://www.bis.org/publ/bcbs189.htm.

10 CVA is an accounting adjustment to the price of a derivative to account for counterparty credit risk.

11 These were the only significant changes to the part of the standards that deal with risk-based capital requirements that were introduced as part of the first stage of the Basel III reform.

12 A minimum requirement on large exposure limits was already a feature of Union legislation, but was a novelty for the Basel standards.

13 More specifically the capital conservation buffer (CCB), the countercyclical capital buffer (CCyB), the systemic risk buffer (SRB), and capital buffers for global and other systemically important institutions (respectively, G-SII and O-SII).

14 Those first set of reforms have also been implemented in most jurisdictions worldwide as can be observed in the eighteenth progress report on adoption of the Basel regulatory framework published in July 2020 (see https://www.bis.org/bcbs/publ/d506.htm).

15 See https://ec.europa.eu/info/publications/200428-banking-package-communication_en.

16 See https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0873&from=EN.

17 A comprehensive list of such measures has been collected by the ESBR, see "Policy measures in response to the COVID-19 pandemic".

18 In its COVID-19 vulnerability analysis published in July 2020, the ECB showed that the largest euro area banks would be sufficiently capitalised to withstand a short-lived deep recession and that the

While the overall level of capital in the EU banking system is now considered satisfactory on average, some of the problems that were identified in the wake of the GFC have not yet been addressed. Analyses performed by the European Banking Authority (EBA) and the European Central Bank (ECB) have shown that the capital requirements calculated by institutions established in the EU using internal models demonstrated a significant level of variability that was not justified by differences in the underlying risks and that ultimately undermines the reliability and comparability of their capital ratios.[19] In addition, the lack of risk sensitivity in the capital requirements calculated using standardised approaches results in insufficient or unduly high capital requirements for some financial products or activities (and hence for specific business models primarily based on them). In December 2017, the BCBS agreed on a final set of reforms[20] to the international standards to address these problems. In March 2018, the G20 Finance Ministers and Central Bank Governors welcomed these reforms and repeatedly confirmed their commitment to full, timely and consistent implementation. In 2019, the Commission announced its intention to table a legislative proposal to implement these reforms in the EU prudential framework.[21]

In light of the COVID-19 pandemic, the preparatory work of this proposal has been delayed. The delay reflected the BCBS's decision of 26 March 2020 to postpone the previously agreed implementation deadlines for the final elements of the Basel III reform by one year. [22]

Considering the above, the present legislative initiative has two general objectives: contributing to financial stability and contributing to the steady financing of the economy in the context of the post-COVID-19 crisis recovery. These general objectives can be broken down in four more specific objectives:

(1) to strengthen the risk-based capital framework, without significant increases in capital requirements overall;

(2) to enhance the focus on ESG risks in the prudential framework;

(3) to further harmonise supervisory powers and tools; and

(4) to reduce institutions' administrative costs related to public disclosures and to improve access to institutions' prudential data.

(1) To strengthen the risk-based capital framework

The temporarily stressed economic conditions have not altered the need to deliver on this structural reform. Completing the reform is necessary to address the outstanding issues and to further strengthen the financial soundness of institutions established in the EU, putting them in a better position to support economic growth and withstand potential future crises. The implementation of the outstanding elements of the Basel III reform is also necessary to provide institutions with the necessary regulatory certainty, completing a decade-long reform of the prudential framework. Finally, completing the reform is in line with the EU's

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number of those banks with insufficient capital resources in case of a more severe recession would be limited (see https://www.bankingsupervision.europa.eu/press/pr/date/2020/html/ssm.pr200728_annex~d36d893ca2.en.pdf).

19 Similar studies, which came to the same conclusion for banks around the globe, were carried out at international level by the BCBS. For details, see https://www.bis.org/bcbs/implementation/rcap_thematic.htm.

20 See https://www.bis.org/bcbs/publ/d424.htm.

21 See https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_19_6269.

22 More specifically to 1 January 2023 for the starting date of application and to 1 January 2028 for the full application of the final elements of the reform.

commitment to international regulatory cooperation and the concrete actions some of its partners have announced or have already taken to implement the reform timely and faithfully.

(2) To enhance the focus on ESG risks in the prudential framework

Another equally important need for reform stems from the Commission's ongoing work on the transition to a sustainable economy. The Commission Communication on the European Green Deal (EGD)[23] and Commission Communication on achieving the EU's 2030 Climate Target ('Fit for 55')[24] clearly set out the Commission's commitment to transform the EU economy into a sustainable economy, while also dealing with the inevitable consequences of climate change. It also announced a Strategy for Financing the Transition to a Sustainable Economy [25] that builds on previous initiatives and reports, such as the action plan on financing sustainable growth[26] and the reports of the Technical Expert Group on Sustainable Finance[27], but reinforces the Commission's efforts in this area to bring them in line with the ambitious goals of the EGD.

Bank-based intermediation will play a crucial role in financing the transition to a more sustainable economy. At the same time, the transition to a more sustainable economy is likely to entail risks for institutions that they will need to properly manage to ensure that risks to financial stability are minimised. This is where prudential regulation is needed and where it can play a crucial role. The Strategy for Financing the Transition to a Sustainable Economy acknowledged this and highlighted the need to include a better integration of environmental, social and governance (ESG) risks into the EU prudential framework as the present legal requirements alone are deemed insufficient to provide incentives for a systematic and consistent management of ESG risks by institutions.

(3) To further harmonise supervisory powers and tools

Another area of focus is the proper enforcement of prudential rules. Supervisors need to have at their disposal the necessary tools and powers to this effect (e.g. powers to authorise institutions and their activities, assess the suitability of their management, or sanction them in case they break the rules). While Union legislation ensures a minimum level of harmonisation, the supervisory toolkit and procedures vary greatly across Member States. This fragmented regulatory landscape in the definition of certain powers and tools available to supervisors and their application across Member States undermines the level playing field in the single market and raises doubts about the sound and prudent management of institutions and their supervision. This problem is particularly acute in the context of the Banking Union. Differences across 21 different legal systems prevent the Single Supervisory Mechanism (SSM) from performing its supervisory functions effectively and efficiently. Moreover, cross-border banking groups have to deal with a number of different procedures for the same prudential issue, unduly increasing their administrative costs.

Another important issue, namely the lack of a robust EU framework for third country groups providing banking services in the EU, has taken a new dimension after Brexit. The establishment of third country branches (TCBs) is mainly subject to national legislation and

23 See https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1588580774040&uri=CELEX:52019DC0640
24 See https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=COM:2021:550:FIN.
25 See COM(2021) 390 final.
26 See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0097.
27 See https://ec.europa.eu/info/publications/sustainable-finance-high-level-expert-group_en.

harmonised to only a very limited extent by the CRD. A recent report by the EBA[28] shows that this scattered prudential landscape provides TCBs with significant opportunities for regulatory and supervisory arbitrage to conduct their banking activities on the one hand, whilst resulting in a lack of supervisory oversight and increased financial stability risks for the EU on the other hand.

Supervisors often lack the information and powers needed to address those risks. The absence of detailed supervisory reporting and the insufficient exchange of information between the authorities in charge of supervising different entities/activities of a third country group leaves blind spots. The EU is the only major jurisdiction where the consolidating supervisor does not have the full picture of the activities of third country groups operating via both subsidiaries and branches. These shortcomings are negatively impacting the level playing field among third country groups operating across different Member States, as well as vis-à-vis institutions headquartered in the EU.

(4) To reduce institutions' administrative costs related to public disclosures and improve access to institutions' prudential data

This proposal is also necessary to further enhance market discipline. This is another important tool in order for investors to exercise their role of monitoring the behaviour of institutions. To do so, they need to access the necessary information. The current difficulties related to the access to prudential information deprive market participants from the information they need about institutions' prudential situations. This ultimately reduces the effectiveness of the prudential framework for institutions and potentially raises doubt about the resilience of the banking sector, especially in periods of stress. For this reason, the proposal aims to centralise disclosures of prudential information with a view to increase access to prudential data and comparability across industry. The centralisation of disclosures in a single access point established by EBA is also aimed at reducing the administrative burden for institutions, especially small and non-complex ones.

- **Consistency with existing policy provisions in the policy area**

Several elements of the proposals amending the CRR and the CRD follow work undertaken at international level, or by EBA, while other adaptations to the prudential framework have become necessary due to the practical experience gained since the national transposition and application of the CRD, including in the context of the SSM.

The proposals introduce amendments to the existing legislation that are fully consistent with the existing policy provisions in the area of prudential regulation and supervision of institutions. The review of the CRR and of the CRD aims at finalising the implementation of the Basel III reform in the EU as well as strengthening and harmonising supervisory tools and powers. These measures are needed to further strengthen resilience of the banking sector.

- **Consistency with other Union policies**

Almost ten years passed since the European Heads of State and Governments agreed to create a Banking Union. Two pillars of the Banking Union – single supervision and single resolution – are in place, resting on the solid foundation of a single rulebook for all EU institutions.

[28] See EBA/REP/2021/20 (available here). The CRD requires EBA to report on the regulatory arbitrage resulting from the current different treatments of TCBs. This report takes stock of the national regimes for TCBs and confirms that significant differences persist in the national treatment of these branches and in the degree of involvement of the host-supervisor.

The proposals aim at ensuring a continued single rulebook for all EU institutions, whether inside or outside the Banking Union. The overall objectives of the initiative, as described above, are fully consistent and coherent with the EU's fundamental goals of promoting financial stability, reducing the likelihood and the extent of taxpayers' support in case an institution is resolved, as well as contributing to a harmonious and sustainable financing of economic activity, which is conducive to a high level of competitiveness and consumer protection.

Lastly, with the recognition of ESG-related risks and the incorporation of ESG elements in the prudential framework, this initiative complements the EU broader strategy for a more sustainable and resilient financial system. It will contribute the European Green Deal's objective that climate risks are managed and integrated into the financial system and the strategic areas of action set out in the 2021 Strategic Foresight Report[29].

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal considers actions to frame the taking up, the pursuit and the supervision of the business of institutions within the Union, with the objective of ensuring the stability of the single market. The banking sector is currently providing the largest part of financing within the single market, making it one of the fundamental components of the Union's financial system. The Union has a clear mandate to act in the area of the single market and the appropriate legal basis consists of the relevant Treaty Articles[30] underpinning Union competences in this area.

The proposed amendments are built on the same legal basis as the legislative acts that are being amended, i.e. Article 114 TFEU for the proposal for a regulation amending the CRR and Article 53(1) TFEU for the proposal for a directive amending the CRD.

• Subsidiarity (for non-exclusive competence)

Most of the actions considered represent updates and amendments to existing Union law, and as such, they concern areas where the Union has already exercised its competence and does not intend to cease exercising such competence. A few actions (particularly those amending the CRD) aim to introduce an additional degree of harmonisation in order to achieve consistently the objectives defined by that Directive.

Given that the objectives pursued by the proposed measures aim at supplementing already existing Union legislation, they can be best achieved at EU level rather than by different national initiatives. National measures aimed at, for example, implementing rules that have an inherent international footprint – such as a global standard like Basel III or better tackling ESG-related risks - into applicable legislation would not be as effective in ensuring financial stability as EU rules. In terms of supervisory tools and powers disclosures and third country branches, if the initiative is left to be dealt with at national level only, this may result in reduced transparency and increased risk of arbitrage, leading to potential distortion of competition and affecting capital flows. Moreover, adopting national measures would be

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[29] COM(2021)750, see strategic area of action 6 ("building resilient and future-proof economic and financial systems").

[30] The relevant Treaty Articles conferring the Union the right to adopt measures are those concerning the freedom of establishment (in particular Article 53 TFEU), the freedom to provide services (Article 59 TFEU), and the approximation of rules which have as their object the establishment and functioning of the internal market (Article 114 TFEU).

legally challenging, given that the CRR already regulates banking matters, including risk weights, reporting and disclosures and other CRR-related requirements.

Amending the CRR and the CRD is thus considered to be the best option. It strikes the right balance between harmonising rules and maintaining national flexibility where essential, without hampering the single rulebook. The amendments would further promote a uniform application of prudential requirements, the convergence of supervisory practices and ensure a level playing field throughout the single market for banking services. This is particularly important in the banking sector where many institutions operate across the EU single market. Full cooperation and trust within the SSM and within the colleges of supervisors and competent authorities outside the SSM is essential to ensure the effective supervision of institutions on a consolidated basis. National rules would not achieve these objectives.

- **Proportionality**

Proportionality has been an integral part of the impact assessment accompanying the proposal. The proposed amendments in different regulatory fields have been individually assessed against the proportionality objective. In addition, the lack of proportionality of the existing rules has been presented in several domains and specific options have been analysed aiming at reducing administrative burden and compliance costs for smaller institutions. This is the case, in particular, of the measures in the area of disclosure, where the compliance burden for small and non-complex institutions would be significantly reduced, if not eliminated. Moreover, the disclosure requirements related to the disclosure of ESG risks that are proposed to be applied to all institutions (i.e. beyond large, listed banks to whom the existing requirement will apply from 2022), will be tailored in terms of periodicity and detail to the size and complexity of the institutions, thus respecting the proportionality principle.

- **Choice of the instrument**

The measures are proposed to be implemented by amending the CRR and the CRD through a Regulation and a Directive, respectively. The proposed measures indeed refer to or further develop already existing provisions inbuilt in those legal instruments (i.e. the framework for calculating risk-based capital requirements, powers and tools made available to supervisors across the Union).

Some of the proposed CRD amendments affecting sanctioning powers would leave Member States with a certain degree of flexibility to maintain different rules at the stage of their transposition into national law.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

The Commission has taken several steps and carried out various initiatives in order to assess whether the current banking prudential framework in the EU and the implementation of the outstanding elements of the Basel III reform are adequate to contribute to ensuring that the EU banking system is stable and resilient to economic shocks and remains a sustainable source of steady funding for the EU economy.

The Commission gathered stakeholders' views on specific topics in the areas of credit risk, operational risk, market risk, CVA risk, securities financing transactions, as well as in relation to the output floor. In addition to these elements related to the Basel III implementation, the Commission has also consulted on certain other subjects with a view to ensuring convergent and consistent supervisory practices across the Union and alleviating institutions' administrative burden.

A public consultation carried out between October 2019 and early January 2020[31] had been preceded by a first exploratory consultation conducted in spring 2018[32], seeking first views of a targeted group of stakeholders on the international agreement. In addition, a public conference was organised in November 2019 to discuss the impact and challenges of implementing the finalised Basel III standards in the EU. Annex 2 of the impact assessment provides the summaries of the consultation and the public conference.

Commission services have also repeatedly consulted Member States on the EU implementation of the final elements of the Basel III reform and other possible revisions of the CRR and the CRD in the context of the Commission Expert Group for Banking, Payment and Insurance (EGBPI).

Finally, during the preparatory phase of the legislation, the Commission services have also held hundreds of meetings (physical and virtual) with representatives of the banking industry as well as other stakeholders.

The results of all the above mentioned initiatives have fed into the preparation of the legislative initiative accompanying the impact assessment. They have provided clear evidence of the need to update and complete the current rules in order to i) further reduce the risks in the banking sector, and ii) enhance the ability of institutions to channel adequate funding to the economy.

- **Collection and use of expertise**

The Commission made use of the expertise of EBA, which prepared an impact analysis on the implementation of the outstanding elements of the Basel III reform[33]. In addition, the Commission services made use of the expertise of the ECB, which prepared a macroeconomic analysis of the impact of implementing those elements.[34]

- **Impact assessment**

For each of the problems identified, the impact assessment[35] considered a range of policy options across four key policy dimensions, in addition to the baseline situation where no Union action is taken.

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31 See https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12015-Alignment-EU-rules-on-capital-requirements-to-international-standards-prudential-requirements-and-market-discipline-/public-consultation_en.

32 See https://ec.europa.eu/info/consultations/finance-2018-basel-3-finalisation_en

33 A first impact analysis was provided in two parts in 2019 (see here and here). A second impact analysis, updating the results of the original analysis in light of the impact of the COVID-19 pandemic was provided in December 2020 (see here). The updated analysis showed that from Q2 2018 to Q4 2019, the total increase in minimum capital requirements due to the implementation of the full Basel III reform decreased by over 5 percentage points (i.e. from +24.1% to +18.5%), while the capital shortfall across the institutions in the sample has more than halved (from EUR 109.5 bn to EUR 52.2 bn).

34 The first macroprudential analysis was prepared in conjunction with the 2019 impact analysis prepared by the EBA. An updated version was then prepared in 2021 to take into account the EBA's updated impact analysis. The results of the updated ECB analysis are presented in the impact assessment. For details on the ECB analysis see https://www.ecb.europa.eu/pub/financial-stability/macroprudential-bulletin/html/ecb.mpbu202107_1~3292170452.en.html.

35 SWD(2021) 320.

For what concerns the implementation of Basel III, the analysis and macroeconomic modelling developed in the impact assessment show that implementing the preferred options and taking into account all the measures in the proposal is expected to lead to a weighted average increase in institutions' minimum capital requirements of 6.4% to 8.4% in the long term (by 2030), after the envisaged transitional period. In the medium term (in 2025), the increase is expected to range between 0.7% and 2.7%.

According to estimates provided by EBA, this impact could lead a limited number of large institutions (10 out of 99 institutions in the test sample) to have to raise collectively additional capital amounts of less than EUR 27bn in order to meet the new minimum capital requirements under the preferred option. To put this amount into perspective, the 99 institutions in the sample (representing 75% of EU banking assets) held a total amount of regulatory capital worth EUR 1414bn at the end of 2019 and had combined profits of EUR 99.8bn in 2019.

More generally, while institutions would incur one-off administrative and operational costs to implement the proposed changes in the rules, no significant increases in costs are expected. Furthermore, the simplifications implied by several of the preferred options (e.g. removal of internally modelled approaches, centralised disclosures) are expected to reduce the costs compared to today.

- **Regulatory fitness and simplification**

This initiative is aimed at completing the EU implementation of the international prudential standards for banks agreed by the BCBS between 2017 and 2020. It would complete the EU implementation of the Basel III reform that was launched by the Basel Committee in the wake of the GFC. That reform was in itself a comprehensive review of the prudential framework that was in place before and during the GFC, namely the Basel II framework (in the EU that framework was implemented through Directive 2006/48/EC, i.e. the original CRD). The Commission used the results of the comprehensive review by the BCBS of the prudential framework, together with input provided by EBA, the ECB and other stakeholders, to inform its implementation work. Pending the implementation of the final Basel III reforms in the EU, a fitness check or refit exercise has not been carried out yet.

- **Fundamental rights**

The EU is committed to high standards of protection of fundamental rights and is signatory to a broad set of conventions on human rights. In this context, the proposal is not likely to have a direct impact on these rights, as listed in the main UN conventions on human rights, the Charter of Fundamental Rights of the European Union, which is an integral part of the EU Treaties and the European Convention on Human Rights (ECHR).

4. BUDGETARY IMPLICATIONS

The proposal does not have implications for the Union budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

It is expected that the proposed amendments will start entering into force in 2023 at the earliest. The amendments are tightly inter-linked with other provisions of the CRR and the

CRD that are already in force and have been monitored since 2014 and, with respect to the measures introduced by the risk reduction measures package, since 2019.

The BCBS and EBA will continue to collect the necessary data for the monitoring of the key metrics (capital ratios, leverage ratio, liquidity measures). This will allow for the future impact evaluation of the new policy tools. Regular Supervisory Review and Evaluation Process (SREP) and stress testing exercises will also help monitoring the impact of the new proposed measures on affected institutions and assessing the adequacy of the flexibility and proportionality provided to cater for the specificities of smaller institutions. Additionally, EBA, together with the SSM and the national competent authorities, are developing an integrated reporting tool (EUCLID) which is expected to be a useful instrument to monitor and evaluate the impact of the reforms. Finally, the Commission will continue to participate in the working groups of the BCBS and the joint task force established by the European Central Bank (ECB) and by EBA, that monitor the dynamics of institutions' own funds and liquidity positions, globally and in the EU, respectively.

- **Detailed explanation of the specific provisions of the proposal**

Enhanced definitions of entities to be included in the scope of prudential consolidation

Recent events have highlighted the need to clarify the provisions on prudential consolidation to ensure that financial groups that are headed by fintech companies or include, in addition to institutions, other entities that engage directly or indirectly in financial activities are subject to consolidated supervision. To that end, Article 4 is emended to clarify and enhance the definitions of the terms 'ancillary services undertaking'(ASU), 'financial holding company' and 'financial institution', which are all key concepts in this regard. ASUs should be considered as financial institutions and hence be included in the scope of prudential consolidation.

Furthermore, it is also proposed to update the definitions of the terms 'parent undertaking' and 'subsidiary' in line with the applicable accounting standards, and align them with the concept of 'control' already provided for in the CRR to avoid inconsistent application of the rules and regulatory arbitrage.

Own Funds

Definitions of 'indirect holding' and 'synthetic holding'

According to Article 72e(1) of the CRR, institutions that are subject to Article 92a of the CRR are required to deduct indirect and synthetic holdings of certain eligible liabilities instruments. However, the current definitions of the term 'indirect holding' and 'synthetic holding', respectively, capture holdings of capital instruments only. Therefore, those definitions are amended to also capture holdings of relevant liabilities (Article 4(1), points (114) and (126), of the CRR).

Capital instruments of mutuals, cooperative societies, savings institutions or similar institutions

Following the withdrawal of the United Kingdom from the EU pursuant to Article 50 of the Treaty on European Union, Article 27(1), point (a)(v), of the CRR is no longer relevant for institutions established in the Union (it was introduced to cater for the needs of an institution established in the UK). The provision is therefore deleted.

Threshold exemptions from deduction from Common Equity Tier 1 items

For the purposes of applying some of the own funds related deductions set out in the CRR, institutions have to calculate certain thresholds that are based on their Common Equity Tier 1 (CET1) items after applying prudential filters and most CET1 related deductions. In order to keep the calculation of the relevant thresholds coherent, and to avoid an asymmetry in the treatment of certain deductions for the thresholds, the new CET1 related deductions envisaged by Regulation (EU) 2019/630 of the European Parliament and of the Council[36] and by Regulation (EU) 2019/876 also need to be taken into account for the calculation of the relevant CET1 items. Therefore, references to Article 36(1), points (m) and (n), of the CRR are added to Articles 46(1), 48(1), 60(1), 70(1), and 72i(1) of the CRR. At the same time, in order to accommodate the removal of the deductions of equity exposures under an internal models approach, the reference to Article 36(1), point (k)(v), is deleted from those provisions.

Minority interests in the context of third-country subsidiaries

Regulation (EU) 2019/2033 of the European Parliament and of the Council[37] (Investment Firms Regulation) envisaged changes to the terms 'institution' and 'investment firm' (Article 4(1), points (2) and (3), of the CRR). A new Article 88b is inserted to ensure that subsidiaries that are located in a third country could nevertheless still be considered for the purposes of Part Two, Title II, of the CRR (i.e. determination of minority interests), provided that those subsidiaries would fall under the revised definitions of those terms if they were established in the Union.

Some additional changes are applied to Articles 84(1), 85(1), and 87(1) of the CRR in the context of third-country subsidiaries. These changes do not alter the current calculation of minority interests, but aim at clarifying the legal text as a follow-up to recent answers provided by the Commission via the EBA Single Rulebook Q&A tool.

Output floor

An output floor (OF) to the risk-based capital requirements is introduced through amendments to both the CRR and the CRD. It represents one of the key measures of the Basel III reforms and aims to reduce the excessive variability of institutions' own funds requirements calculated using internal models, and thereby enhance the comparability of institutions' capital ratios. It sets a lower limit to the capital requirements that are produced by institutions' internal models, at 72.5% of the own funds requirements that would apply on the basis of standardised approaches. The decision to introduce the OF is based on analysis revealing that institutions' use of internal models makes them prone to underestimate risks, and hence own funds requirements.

The calculation of floored risk-weighted assets (RWAs) is set out in Article 92 of the CRR. Specifically, Article 92(3) is amended to specify which total risk exposure amount (TREA) – floored or un-floored – is to be used for the calculation of the minimum (so-called "Pillar 1") own funds requirements.

The floored TREA, as set out in Article 92(5), is to be used only by the EU parent institution, financial holding company or mixed financial holding company of a banking group for the purposes of the group solvency ratio calculated at the highest level of consolidation in the EU.

[36] 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. 4–12.

[37] Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014, OJ L 314, 5.12.2019, p. 1–63.

By contrast, the un-floored TREA continue to apply to any group entity for the calculation of own funds requirements at individual level, as specified further in Article 92(4).

Every parent institution, financial holding company or mixed financial holding company in a Member State (different form the EU parent's location) needs to calculate its share of the floored TREA used for the consolidated group own funds requirement by multiplying that consolidated group's own funds requirement by the proportion[38] of the sub-consolidated RWAs that are attributable to that entity and its subsidiaries in the same Member State, as applicable.

The consolidated group's RWAs that are attributable to an entity/subgroup are to be calculated in accordance with Article 92(6) as the entity's/subgroup's RWAs, as if the OF would apply to its TREA. This would recognise the benefits of risk diversification across the business models of different entities within the same banking group. At the same time, any potential increase in the own funds required due to the application of the OF at consolidated level would have to be distributed fairly across the subgroups which are located in other Member States than the parent, according to their risk profile.

Article 92(7) replicates the provisions of former Article 92(4), clarifying the calculation factors to be applied to the various risk types covered by the own funds requirements.

Credit risk framework – standardised approach

The standardised approach for credit risk (SA-CR) is used by the majority of institutions across the EU to calculate the own funds requirements for their credit risk exposures. In addition, the SA-CR must serve as a credible alternative to internal model approaches and as an effective backstop to them. The current SA-CR has been found to be insufficiently risk-sensitive in a number of areas, leading sometimes to inaccurate or inappropriate measurement of credit risk (either too high or too low) and hence, to inaccurate or inappropriate calculation of own funds requirements.

The revision of the SA-CR increases the risk sensitivity of this approach in relation to several key aspects.

Exposure value of off-balance sheet items

The revised Basel rules text introduced a number of changes to how institutions are to determine the exposure value of off-balance sheet items and commitments on off-balance sheet items.

Article 5 is amended to introduce the definition of the term 'commitment' and the derogation of contractual arrangements that meet specific conditions from being classified as commitments.

Article 111 is amended to align the credit conversion factors ('CCFs') applicable to off-balance sheet exposures to the Basel III standards, by introducing two new CCF of 40% and 10%, respectively, and removing the 0% CCF. The treatment of the commitments on off balance-sheet items is also clarified with regard to the CCFs applicable to determine their exposure value.

The exemption introduced in Article 5, in accordance with Basel III standards, will allow institutions, however, to continue to apply a 0% CCF to specific contractual arrangements for corporates, including SMEs, that are not classified as 'commitments'. Furthermore, Article

[38] The proportion is calculated with respect to the consolidated group's RWAs.

495d introduces a transitional period whereby institutions are permitted to apply a 0% CCF to unconditionally cancellable commitments until 31 December 2029; after this date, incrementing CCF value will be phased-in over the next three years, with the CCF value at the end of the phasing-in period reaching 10%. This transitional period will allow the EBA to assess whether the impact of a 10% CCF for those commitments would not lead to unintended consequences for certain types of obligors that rely on those commitment as a source of flexible funding. On the basis of that assessment, the Commission will need to decide whether to submit to the European Parliament and to the Council a legislative proposal to amend the CCF to be applied to unconditionally cancellable commitments.

The classification of off-balance sheet items in Annex I is amended in accordance with the revised Basel III standards to better reflect the grouping of those items in buckets based on applicable CCFs.

Article 111 is further amended to introduce a mandate for EBA to specify technical elements that would allow institutions to correctly assign their off-balance sheet exposures to the buckets in Annex I, and hence to correctly calculate the exposure value for these items.

Exposures to institutions

The revised Basel III standards amended the current treatment of exposures to institutions, introducing the Standardised Credit Risk Assessment Approach (SCRA) alongside the existing External Credit Risk Assessment Approach (ECRA). While the ECRA relies on external credit risk assessments (i.e. credit ratings) provided by eligible credit assessment institutions (ECAIs), to determine the applicable risk weights, under the SCRA institutions are required to classify their exposures to institutions into one of three buckets (“grades”).

Article 120 is amended in line with the Basel III standards to lower the risk weight applicable to exposures to institutions for which a credit quality step 2 credit assessment by a nominated ECAI is available, and to include in the scope of short-term exposures those which arise from the movement of goods across national borders with an original maturity of six months or less.

Article 121 is amended to introduce the SCRA provided by the Basel III standards for exposures to institutions for which no credit assessment by a nominated ECAI is available. This approach requires institutions to classify their exposures to these institutions into one of three grades based on several quantitative and qualitative criteria. In order to avoid a mechanistic application of the criteria, institutions are subject to the due diligence requirements set out in Article 79 of the CRD as for exposures to institutions for which a credit assessment by a nominated ECAI is available when assigning the applicable risk weight. This ensures that the own funds requirements appropriately and conservatively reflect the creditworthiness of the institutions’ counterparties regardless of whether the exposures are externally rated or not. In line with the Basel III standards, the current option of risk-weighting exposures to institutions based on their sovereigns’ ratings is removed to break the link between institutions and their sovereigns.

Article 138 is amended in line with the Basel III standards to break the bank-sovereign link also for rated institutions by prohibiting that credit assessments by a nominated ECAI from incorporating assumptions of implicit government support, unless the ratings refer to public sector institutions.

Exposures to corporates

Article 122 is amended in line with the Basel III standards to lower the risk weight applicable to exposures to corporates for which a credit quality step 3 credit assessment by a nominated ECAI is available.

With the implementation of the OF, institutions using internal models to calculate own funds requirements for exposures to corporates would also need to apply the SA-CR which relies on external ratings to determine the credit quality of the corporate borrower. Most EU corporates, however, do not typically seek external credit ratings, due to the cost of establishing a rating and other factors. Given that own funds requirements calculated under the SA-CR are, on average, more conservative for unrated corporates than for corporates that have a rating, the implementation of the OF could cause substantial increases in own funds requirements for institutions using internal models. To avoid disruptive impacts on bank lending to unrated corporates and provide enough time to establish public and/or private initiatives aimed at increasing the coverage of credit ratings, Article 465 is amended to provide for a specific transitional arrangement for exposures to unrated corporates when calculating the OF During the transitional period, institutions are allowed to apply a preferential risk weight of 65% to their exposures to corporates that do not have an external rating, provided that those exposures have a probability of default (PD) of less or equal to 0.5% (this corresponds to an 'investment grade' rating). This treatment applies to all unrated corporates, irrespective of whether they are listed or not. EBA shall monitor the use of the transitional treatment and the availability of credit assessments by nominated ECAIs for exposures to corporates. EBA will be required to monitor the use of the transitional treatment and prepare a report on the appropriateness of its calibration. On the basis of that report, the Commission will need to decide whether to submit to the European Parliament and to the Council a legislative proposal on the treatment of unrated corporate exposures of high credit quality. .

Measures to improve the availability of external ratings for corporates are proposed through amendments to Article 135.

Treatment of specialised lending exposures

Promoting viable infrastructure projects and other specialised projects is of vital importance for the economic growth of the Union. Specialised lending by institutions is also a defining characteristic of the Union economy, as compared with other jurisdictions where such projects are predominantly financed by capital markets. Large institutions established in the EU are major providers of funding for specialised projects, objects finance and commodities finance, in the Union and globally; as such, they have developed a high level of expertise in those areas. Business is conducted mainly with special purpose entities that typically serve as borrowing entities and for which the return on the investment is the primary source of repayment of the financing obtained.

In line with the Basel III standards, a specialised exposures class as well as two general approaches to determine applicable risk weights for specialised exposures, one for externally rated exposures and one for exposures which are not externally rated, are introduced under the SA-CR in the new Article 122a. Project finance, object finance and commodities finance exposure classes are introduced under the SA-CR, in line with the same three subcategories in the internal ratings-based (IRB) approaches.

Since the new standardised treatment under the Basel III framework for unrated specialised lending exposures is not sufficiently risk-sensitive to reflect the effects of comprehensive security packages usually associated with some object finance exposures in the Union, additional granularity is introduced in the SA-CR for these exposures. Unrated object finance exposures that benefit from a prudent and conservative management of the associated financial risks by complying with a set of criteria capable to lower their risk profile to a standard of "high quality" benefit from a favourable capital treatment when compared to the general treatment of unrated object finance exposures under the Basel III standards. The determination of what constitutes “high quality” for object finance is subject to further specific conditions to be developed by EBA through draft regulatory technical standards.

The preferential treatment introduced in CRR II to foster bank finance and private investment in high quality infrastructure projects (‘infrastructure supporting factor’) provided in Article 501a is maintained under both the SA-CR and the IRB approaches for credit risk with targeted clarifications, resulting in lower own funds requirements for infrastructure projects than the specific treatment provided by the Basel III standards. However, the preferential treatment provided in the new Article 122a for “high quality” project finance exposures will only apply to exposures to which institutions do not already apply the ‘infrastructure supporting factor’ treatment under Article 501a to avoid an unjustified reduction in own funds requirements.

Retail exposures

Article 123 is amended to further align the classification of retails exposures under SA-CR with the classification under the IRB approaches so as to ensure a consistent application of the correspondent risk weights to the same set of exposures. Article 123 is also amended to introduce a preferential risk-weight treatment of 45% for revolving retail exposures that meet a set of conditions of repayment or usage capable to lower their risk profile, defining them as exposures to “transactors”, in line with the Basel III standards. Exposures to one or more natural persons that do not meet all the conditions to be considered retail exposures are to be risk weighted at 100%.

Exposures with currency mismatch

A new Article 123a is inserted to introduce a risk-weight multiplier requirement for unhedged retail and residential real estate exposures to individuals where there is a mismatch between the currency of denomination of the loan and that of the obligor's source of income. As set out in the final Basel III standards, the multiplier is set at the level of 1.5, subject to a cap for the resulting final risk weight of 150%. Where the currency of the exposures is different from the domestic currency of the country of residence of the obligor, institutions may use all unhedged exposures as a proxy.

Exposures secured by real estate

In line with the final Basel III standards, the treatment of the real estate exposure class is amended to increase further the granularity with regard to the inherent risk posed by different types of real estate transactions and loans.

The new risk weight treatment maintains the distinction between residential and commercial mortgages, but adds further granularity according to the type of financing of the exposure (dependent or not on income streams generated by the collateralised property) and according to the phase the property is in (construction phase vs. finalised property).

One novelty is the introduction of a specific treatment of income producing real estate (IPRE) mortgage loans, i.e. that mortgage loans the repayment of which is materially dependent on the cash flows generated by the property securing those loans. Evidence gathered by the Basel Committee shows that those loans tend to be materially riskier than mortgage loans the repayment of which are materially dependent on the underlying capacity of the borrower to service the loan. However, under the current SA-CR, there is no specific treatment for such riskier exposures, even though this dependence on cash flows generated by the property securing the loan is an important risk driver. The lack of a specific treatment may result in insufficient levels of own funds requirements to cover unexpected losses on this type of real estate exposures.

In Article 4, several definitions are amended, replaced or newly inserted to clarify the meaning of the various types of exposures secured by mortgages on immovable property in line with the revised treatments in Part III (points (75) to (75g)).

Article 124 is replaced to set out in paragraphs 1 to 5 the general and some specific requirements for the assignment of risk weights for exposures secured by mortgages on residential immovable property and commercial immovable property, respectively, including for (residential and commercial) IPRE mortgages. Paragraphs 6 to 10 retain the current periodic assessment of the appropriateness of the standard risk weights and the process to increase them at the discretion of the designated authority.

Article 125 is replaced to implement the revised Basel III treatment for exposures secured by mortgages on residential property. While the loan splitting approach, which splits mortgage exposures into a secured and an unsecured part and assigns the corresponding risk weight to each of these two parts, is retained, its calibration is adjusted in line with the Basel III standards whereby the secured part of the exposure up to 55% of the property value receives a risk weight of 20%. This calibration of the risk weight for the secured part addresses the situation where the institution may incur additional unexpected losses even beyond the haircut that is already applied to the value of the property when selling it in case of a default of the obligor. Furthermore, Article 125 provides a more risk-sensitive fall-back treatment depending on the exposure-to-value (ETV) ratio for residential mortgages where the property is not eligible for the loan-splitting (e.g. because it is not finished).

The amended Article 125 also lays down a dedicated and more granular risk weight treatment which applies to residential IPRE exposures unless the so-called "hard test" is met: where the competent authority of the Member State where the property securing the mortgage is located has published evidence showing that the property market is well-developed and long-established with yearly loss rates which do not exceed certain thresholds, the same preferential risk weights may be applied to residential IPRE exposures as for other residential exposures where the risk of the borrower does not materially depend on the performance of the property.

Article 126 is replaced to implement the revised Basel III treatment for exposures secured by mortgages on commercial immovable property. Conceptually, it mirrors the treatment for residential real estate exposures: the well-established loan splitting approach is maintained and its calibration is adjusted in line with the Basel III standards whereby the secured part of the exposure up to a property value of 55% receives a risk weight of 60%. Furthermore, Article 126 provides a more risk-sensitive fall-back treatment depending on the ETV ratio for commercial mortgages where the property is not eligible for the loan-splitting.

A dedicated and more granular risk-weight treatment for commercial IPRE exposures is introduced via amendments to Article 126 while keeping the "hard test", which allows institutions to apply the same preferential risk weights to income-producing and other commercial real estate exposures secured by property located in markets where the yearly loss rates do not exceed certain thresholds.

Loans financing land acquisition, development or construction (ADC) of any residential or commercial immovable properties incur a heightened risk. That heightened risk is due to the fact that the source of repayment at origination of the loan is either a planned, but uncertain sale of the property, or substantially uncertain cash flows. The current treatment of speculative immovable property financing is based solely on the borrower's intention to resell the property for a profit, without taking into account to which extent the repayment is actually certain. Therefore, a new definition is introduced in Article 4 and a new Article 126a is inserted to introduce the specific risk weight treatment of 150% provided by the Basel III standards for loans to companies or special purpose vehicles financing ADC of any residential or commercial property. In turn, the current risk weight treatment of 150% for "speculative immovable property financing" is removed as it is solely based on the borrower's intention to resell the property for a profit, without taking into account to which extent the repayment is actually uncertain. In line with the Basel III standards, Article 126a allows to assign a risk weight of 100% to residential ADC exposures provided that certain risk-mitigating conditions (in terms of underwriting standards, proportion of pre-sale or pre-lease contracts and equity at risk) are met.

To reduce the impact of cyclical effects on the valuation of property securing a loan and to keep own funds requirements for mortgages more stable, the final Basel III standards cap the value of the property recognised for prudential purposes at the value measured at loan origination, unless modifications "unequivocally" increase the value of the property. At the same time, the standards do not oblige banks to monitor the development of property values. Instead, they only require adjustments in case of extraordinary events. By contrast, the current SA-CR applicable in the EU requires institutions to regularly monitor the value of property pledged as collateral. Based on this monitoring, institutions are required to make upwards or downwards adjustments to the property (irrespective of the property value at loan origination). Article 208 is amended to reduce the impact of cyclical effects on the valuation of property securing loans and to keep own funds requirements for mortgages more stable. In particular, the current requirement for frequent monitoring of property values is kept, allowing for upwards adjustment beyond the value at loan origination (unlike the Basel III standards), but only up to the average value over the last three years in case of commercial immovable property and over the last six years in case of residential immovable property. For immovable property collateralising covered bonds, it is clarified in Article 129 that competent authorities may allow institutions to use the market value or the mortgage lending value without limiting increases in the property value at the average over the last three or six years, respectively. Furthermore, it is clarified in Article 208 that modifications made to the property that improve the energy efficiency of the building or housing unit must be considered as unequivocally increasing its value. Finally, institutions are allowed to carry out the valuation and revaluation of properties by means of advanced statistical or other mathematical methods, developed independently from the credit decision process, subject to the fulfilment of a number of conditions, which are based on EBA Guidelines on loan origination and monitoring (EBA/GL/2020/06), and subject to supervisory approval.

Article 465 is amended to provide for a specific transitional arrangement for low-risk exposures secured by mortgages on residential property when calculating the output floor. During the transitional period Member States may allow institutions to apply a preferential risk weight of 10% to the secured part of the exposure up to 55% of the property value, and a risk weight of 45% to the remaining part of the exposure up to 80% of the property value, provided certain conditions are met aimed at ensuring that they are low risk, and verified by the competent authority. EBA will be required to monitor the use of the transitional treatment and prepare a report on the appropriateness of its calibration. On the basis of that report, the Commission will need to decide whether to submit to the European Parliament and to the Council a legislative proposal on low-risk exposures secured by mortgages on residential property.

Subordinated debt exposures

Article 128 is replaced to implement the revised treatment for exposures to subordinated debt provided by the final Basel III standards (i.e. a risk weight of 150%).

Equity exposures

Article 133 is replaced to implement the revised treatment for equity exposures under the final Basel III standards. The scope of the equity exposure class is clarified by providing a definition of equity exposures and specifying which other instruments are to be categorised as equity exposures for the purpose of calculating the risk weighted assets for credit risk.

To increase the risk-sensitivity of the SA-CR, the revised risk weights reflect the higher loss risk of equity compared to debt exposures via a risk weight of 250% and differentiate between long-term and riskier speculative investments which are assigned a risk weight of 400%. In order to avoid unwarranted complexity, the classification of long-term exposures refers to the holding period approved by the institution’s senior management as central criterion.

Equity exposures incurred under legislative programmes to promote specified sectors of the economy that provide significant subsidies for the investment to the institution and involve some form of government oversight may be assigned a risk weight of 100% subject to a threshold of 10% of the institution’s own funds and supervisory approval. Such subsidies may also be in the form of general guarantees by multilateral development banks, public development credit institutions and international organisations. This is to reflect the fact that the European Investment Bank Group, multilateral development banks, public development credit institutions and Member States are setting up such ‘legislative programmes’, often based on general public guarantees and linked to financial recovery and resilience plans, to mobilise private capital, including to support strategic businesses.

Equity exposures to central banks remain subject to a risk weight of 100%.

Finally, Article 133 provides a floor for equity exposures that are recorded as a loan but arise from a debt/equity swap made as part of the orderly realisation or restructuring of the debt: in line with the Basel III standard, the applicable risk weight must not be lower than the risk weight that would apply if the holdings remained in the debt portfolio.

Many EU banks hold long-standing, strategic equity participations in financial and non-financial corporates. The Basel III standards increase the RWs for all kinds of equity exposures over a 5-year transition period without providing a specific treatment for strategic equity investments. Applying the more conservative approach embedded in the Basel III standards to the whole stock of existing equity holdings could jeopardise the economic viability of existing strategic relationships.

In view of this, Article 49 is amended to set the risk weight applicable to equity exposures to financial sector entities included in the same scope of prudential consolidation (group) or – subject to supervisory approval – to institutions falling within the same institutional protection scheme at 100% thereby preserving the current treatment for most entities concerned.

Furthermore, a new Article 495a is inserted to set out a gradual phasing-in of the new risk weights applicable to equity exposures. Furthermore, the new Article provides for a grandfathering of the current treatment of historic and strategic equity investments that have been holding by an institution over the last ten years in entities, including in insurance undertakings, over which it exercises significant influence.

Defaulted exposures

Article 127 is amended to clarify the risk weight treatment of discounts on purchases of non-performing exposures (NPEs), as announced in the Communication on “Tackling non-performing loans in the aftermath of the COVID-19 pandemic”. To this end, the proposal clarifies that institutions can take into consideration the discount on purchased defaulted assets when determining the appropriate risk-weight to be applied to defaulted exposure. This complements EBA’s ongoing work aimed at amending the RTS on credit risk adjustments.

Further amendments to Article 127 align the language with the one used in the revised Basel III standards.

Use of credit assessments by External Credit Assessment Institutions and mapping

To inform any future initiative on the set-up of public or private rating schemes, Article 135 is amended to mandate the European Supervisory Authorities (ESAs) to prepare a report on the impediments to the availability of external credit ratings by ECAIs, in particular for corporates, and on possible measures to address them.

Credit risk framework – internal ratings-based approaches

Reduction of the scope of internal rating based approaches

Own funds requirements for credit risk that are based on institutions' internal models have important benefits in terms of risk sensitivity, institutions' understanding of their risks as well as the level playing field between among institutions across the Union. However, the financial crisis highlighted important deficiencies in the IRB approaches. A range of studies conducted at both international and EU level found an unacceptably wide variation in capital requirements across institutions that cannot be explained solely by differences in the riskiness of institutions' portfolios. This hinders the comparability of capital ratios and it impacts the level playing field among institutions. Also, the crisis has revealed instances where the losses incurred by institutions on some portfolios were significantly higher than the model predictions, which resulted in insufficient levels of capital held by individual institutions.

Institutions have done so because the applicable framework contained insufficient limits as regards the availability of IRB approaches for exposures classes that are difficult to model, and because the framework in principle compelled those institutions that intended to use the IRB approach for some of their exposures to roll it out to all exposures

Articles 150 and 151(8) are amended to limit the exposures classes for which internal models can be used to calculate own funds requirements for credit risk, implementing the Basel III standards. Specifically, the use of the advanced IRB (A-IRB) approach, which allows the modelling of all risk parameters, is only allowed for those exposure classes for which robust modelling is possible whereas other exposure classes are "migrated" to less sophisticated approaches:

- for exposures to corporates with total consolidated annual sales greater than EUR 500 million or belonging to a group where the total annual sales for the consolidated group is more than EUR 500 million ('large corporates'), for exposures to institutions and to other financial sector entities (including those treated as corporates), the use of the advanced IRB approach is no longer available – for those exposures, institutions can use the foundation IRB (F-IRB) approach and hence only model the PD;
- for equity exposures, the IRB approach is no longer available - for those exposures, institutions must use the SA-CR.

Limiting the use of advanced modelling approaches is expected to remove an important source of undue variability in RWAs and thereby improve the comparability of own funds requirements. In addition, it will remove a source of unnecessary complexity from the framework.

New exposure class for regional governments and local authorities as well as public sector entities

Currently, exposures to public sector entities (PSEs) and to regional governments and local authorities (RGLAs) can be treated either as exposures to central governments or as exposures to institutions. Those treated as exposures to institutions would need to be migrated to the F-IRB approach under the revised Basel III standards and hence be subject to the modelling constraints, whereas exposures treated as exposures to central governments would not. To reduce undue complexity in the framework, ensure a consistent treatment of exposures to PSEs and RGLAs and avoid unintended variability in the related own funds requirements, it is proposed to create a new 'PSE-RGLA' exposure class in Article 147(2), to which all exposures to those entities will be assigned (irrespective of their current treatment as sovereign exposures or as institution exposures), and to apply to this new exposure class the same rules that are applicable to the general corporates exposure class, as provided in a new Article 151(11). In particular, the input floors applicable to corporate exposures would apply in the same manner to exposures belonging to the PSE-RGLA exposure the Basel III class.

Input floors under the A-IRB approach

Articles 160(1), 161(4), 164(4), and 166(8c) are amended to introduce minimum values for institutions' own estimates of IRB parameters that are used as inputs to the calculation of RWAs ('input floors'). These input floors act as safeguards to ensure that own funds requirements do not fall below sufficiently prudent levels, mitigating model risk, measurement error, data limitations, and improving the comparability of capital ratios across institutions.

Concerning the PD risk parameter, the existing input floors are slightly increased (from 0.03% under Basel II to 0.05% under Basel III). For the loss given default (LGD) and CCF risk parameters, on the other hand, the input floors are new requirements, calibrated in a prudent manner. The LGD input floor for unsecured corporates exposures is set at 25%, and for unsecured general retail exposures at 30%. A formula including conservative haircuts by collateral type is provided for secured exposures, while the IRB-specific CCF input floor are set according to the 50% of the applicable standardised approach CCF.

Treatment of sovereign exposures

A new Article 159a is added to specify in line with the Basel III standards that the new input floors (described under the previous section) applicable to institutions' own PD, LGD and CCF estimates are not applicable to sovereign exposures.

Deletion of the "1,06 scaling factor" in the risk weight formula

In line with the Basel III standards, Articles 153(1) and 154(1) are amended to delete the "1,06 scaling factor" that applies to the risk weighted exposure amounts for credit risk under the IRB approaches thereby simplifying the calculation and cancelling the 6% calibration increase in the IRB risk weights that apply under the current framework.

Removal of the "double default" treatment

Articles 153(3), 154(2), 202 and 217 are amended to remove the double default method applicable to some guaranteed exposures, leaving only one general formula for the calculation of risk weights and simplifying the framework, as provided by the Basel III standards. With fewer embedded options, the revised calculation ensures greater comparability of RWAs across institutions and a reduction of undue variability.

Roll-out of the IRB approaches and the permanent partial use

Under the final Basel III standards, the adoption of the IRB approaches for one exposure class by an institution is no longer conditioned to the fact that all the exposure classes of its banking book should eventually be treated under the IRB approach ('IRB roll out') except for those exposures for which a permanent partial use (PPU) of the SA-CR is permitted by the rules and approved by the competent authority. This new principle is implemented in Articles 148 and 150, allowing institutions to apply the IRB approaches selectively.

In order to provide a level playing field between those institutions which are currently treating their exposures under one of the IRB approaches and those which are not, transitional arrangements are set out in a new Article 494d which allow institutions to revert to the SA-CR during a three year period subject to competent authorities' approval under a simplified procedure.

Revised risk parameter under the foundation IRB approaches

Article 161(1) is amended to implement the recalibrated LGD values for senior unsecured exposures to corporates (LGD of 40% instead of 45%). The LGD value for dilution risk of purchased corporate receivables is also amended so as to be aligned with the Basel treatment.

Revised scope and calculation methods for own estimates of credit conversion factors

Article 166(8), (8a), (8b) and (8d) and Article 182 are amended to revise the scope and calculation methods for the computation of own estimates of CCFs which are used to determine the exposure value of off-balance sheet items other than derivatives contracts. In particular, the new provisions require the use of a fixed period of 12 months prior to default to estimate own estimates of CCFs, and allow the use of own estimates only for specific commitments for which the corresponding standardised CCF is lower than 100%.

Guarantees provided by protection providers treated under a less sophisticated approach

The Basel III standards have significantly revised the methodologies that institutions are allowed to use to recognise the risk mitigating effects of eligible guarantees with the view to, among others, limit the range of approaches and therefore reduce the variability of own funds requirements. To this end, the Basel III standards generally provide for the risk-weight to be applied to the secured part of the exposure to be the one that should be computed according to the approach applied to comparable direct exposures to the protection provider. Where an exposure which is treated under the A-IRB approach is guaranteed by a guarantor which is treated under the F-IRB approach or the SA-CR, recognition of that guarantee leads to the guaranteed exposure to be treated under the F-IRB or the SA-CR, respectively. Recognition of guarantees in the A-IRB approach will need to be done through the use of one of the following approaches:

- the substitution of the risk weight approach, substituting the risk weight of the obligor by the risk weight of the guarantor if comparable direct exposures towards the guarantor are treated under the SA-CR (Article 235a);
- the substitution of risk parameters approach, substituting the risk parameters of the obligor by the risk parameters associated to comparable direct exposures to the guarantor if comparable direct exposures towards the guarantor are treated under the IRB approach (Article 236a); or
- the adjustment of the LGD or of both PD and LGD estimates (Article 183); under this approach, the proposal clarifies that the recognition of a guarantee should never lead to a risk-weight applicable to the guaranteed exposure, which is lower than that of a approach comparable direct exposure to the guarantor. This is intended to

safeguard the consistency of the framework in terms of risk assessment, avoiding the situation that an indirect exposure to a particular protection provider could benefit from a lower risk weight than a comparable direct exposure where that same protection provider is the obligor.

Specialised lending exposures under the A-IRB approach

The new modelling restrictions under the Basel III standards are relatively limited as regards the treatment of specialised lending exposures under the IRB approaches. While parameter floors do apply, the A-IRB approach remains available independently of the size of the obligor, unlike the treatment applicable to other corporate exposures. However, the new parameter floors applicable to corporate exposures also apply to specialised lending exposures without giving recognition to the specific lending practices which entail security arrangements to mitigate the credit risk.

Therefore, a new Article 495b is inserted to phase-in the new floors, starting with a 50% discount factor which increases gradually to 100% over a 5-year period. Furthermore, the Article mandates EBA to assess the adequacy of the PD and LGD input floors applicable to specialised lending exposures and empowers the Commission to revise the parameters by a delegated act based on EBA's assessment..

Enabling clauses for leasing exposures and credit insurance

A high level of expertise and risk management has been developed by institutions in the EU in the area of leasing, as well as in the use of credit insurance, in particular for trade finance purposes. In the absence of sufficient data, it remains unclear whether the new risk parameters are calibrated appropriately to reflect the risk mitigating effect of leasing collateral and, respectively, which features credit insurance policies must possess to be recognised as eligible credit protection.

Therefore, a new Article 495c is inserted mandating EBA to assess the appropriateness of the Basel III risk calibration of the parameters applicable to leasing exposures, in particular the new collateral haircuts ('volatility adjustments') and regulatory values for secured LGD. The Commission is empowered to revise the calibration via a delegated act, if appropriate, taking into account EBA's report. In the meantime, a 5-year phasing-in applies to the new risk parameters under the A-IRB approach.

Furthermore, a new Article 495d is inserted mandating EBA to report to the Commission on the eligibility and the use of credit insurance as a credit risk mitigation technique and on the appropriate risk parameters they should be associated with under the SA-CR and foundation IRB approach. Based on that report, the Commission is required to submit, if appropriate, a legislative proposal on the use of credit insurance as a credit risk mitigation technique.

Credit risk framework – credit risk mitigation techniques

Articles 224 to 230 are amended to implement the Basel III rules and methods for taking into account collateral and guarantees under both the SA-CR and the F-IRB approach. In particular, the supervisory haircuts applicable to financial collateral under the financial collateral comprehensive method have been revised, and so have the values of secured LGDs and collateral haircuts applicable to exposures treated under the F-IRB.

Article 213(1), point (c)(iii), and Article 215(2) are amended to clarify the eligibility criteria for guarantees and, respectively, guarantees provided in the context of mutual guarantee schemes or provided by or counter-guaranteed by some entities. Those clarifications should notably provide further clarity on the eligibility as credit risk mitigation techniques of public guarantee schemes set up in the context of the COVID-19 crisis.

Market risk framework

In 2016, the BCBS published a first set of revised market risk standards, known as the fundamental review of the trading book (FRTB) in order to address identified deficiencies of the market risk capital requirements framework for trading book positions. In the course of monitoring the impact of the FRTB standards, the BCBS identified a number of issues with the FRTB standards and, as a result, published revised FRTB standards in January 2019.

In November 2016, the Commission originally proposed to introduce binding own funds requirements based on the FRTB standards as part of the CRR II to address the deficiencies of the market risk framework. However, given the BCBS's subsequent decision to revise those standards, with timelines incompatible with the milestones in the CRR II negotiation process, the European Parliament and the Council agreed to implement the FRTB standards in the CRR II only for reporting purposes. The introduction of own funds requirements based on the FRTB standards was left for later, by way of adoption of a separate legislative proposal.

In order to introduce binding own funds requirements for market risk in line with the revised FRTB standards, a number of amendments are made to the CRR.

Subject matter, scope and definitions

Article 4 is amended to clarify the definition of trading desk.

Elements of own funds

Article 34 is amended to include a derogation allowing institutions to reduce the total additional value adjustments under extraordinary circumstances, based on an opinion provided by EBA, in order to address the pro-cyclicality embedded in the additional value adjustments deducted from CET1 capital.

General requirements, valuation and reporting

Article 102 is amended to introduce the FRTB approaches for the purpose of the calculation of own funds requirements. Article 104 is replaced to revise the criteria used to assign positions to the trading book or to the non-trading book (i.e. the banking book); it introduces also a derogation which allows an institution to assign to the non-trading book specific instruments that would otherwise be assigned to the trading book; the derogation is subject to very strict conditions and to an approval by the institution's competent authority. Article 104a is amended to further specify the conditions that need to be used for reclassifying an instrument between the two books. Article 104b is amended to introduce a derogation that allows institutions to create dedicated trading desks to which institutions can allocate exclusively non-trading book positions subject to foreign exchange risk and commodity risk. Article 104c is introduced to specify the treatment of hedges of foreign exchange risk in capital ratios, which allows institutions to exclude, under certain conditions, some positions from the calculation of the own funds requirements for foreign exchange risk. Article 106 is amended to clarify to the existing provisions on internal risk transfers.

General provisions

Article 325 is amended to introduce binding own funds requirements for market risk based on the FRTB approaches set out in Chapters 1a (alternative standardised approach or A-SA), 1b (alternative internal model approach or A-IMA) and 2 to 4 (simplified standardised approach or SSA), as well as conditions for their use and the frequency of calculation of the own funds requirements. A derogation for institutions from calculating own funds requirements for positions subject to foreign exchange risk that are deducted from their own funds is also introduced.

Article 325a is amended to introduce the eligibility criteria for using the SSA.

Article 325b clarifies the calculation of own funds requirements for market risk on a consolidated basis.

The alternative standardised approach

Article 325c is amended to introduce additional qualitative requirements related to the validation, documentation and governance of the A-SA.

Article 325j is amended to clarify certain elements of the final FRTB standards with regards to the treatment of investments in funds (i.e. collective investment undertakings or CIUs) and to introduce some targeted adjustments to the calculation of the own funds requirements for these positions to ensure that the treatment of CIUs under the standardised approach does not disproportionately increase the complexity of the calculation and is less penalising, given that CIUs play a crucial role in facilitating the accumulation of personal savings, whether for major investments or for retirement. These objectives are addressed by specifying that institutions should apply the look-through approach with a monthly frequency for those positions in CIUs concerned by that approach, and by allowing institutions, under specific conditions, to use data provided by relevant third-parties in the calculation of the own funds requirements under the look-through approach. In addition, under the mandate-based approach, Article 325j introduces a mandate for the EBA to further specify the technical elements that the institutions must use to build up the hypothetical portfolio used in the calculation of the own funds requirements.

Article 325q is amended to clarify the treatment of foreign exchange vega risk factors.

Article 325s is amended to adjust the formula for vega risk sensitivities.

Article 325t is amended to further align the sensitivities used for the calculation of own funds requirements with the ones used for the risk management of the institution.

A provision related to traded non-securitisation credit and equity derivatives is moved from Article 325ab to the more relevant Article 325v.

Articles 325y, 325am, 325ah and 325ak are amended similarly to clarify the assignment of credit quality categories under the A-SA.

Article 325ae is modified to clarify the treatment of the inflation risk factor and of cross currency basis risk factors.

Articles 325ah and 325ak are amended to clarify the risk weights of covered bonds (both externally rated and unrated).

Article 325ai and 325aj are amended to clarify the value of correlation parameters.

Article 325as is modified to introduce a lower risk weight for the commodity delta risk factor related to carbon trading emissions. Under the final Basel III standards, emission allowances are assimilated to electricity contracts, which could be considered too conservative in light of historical data relevant to the EU market for emission allowances. Indeed, the creation of the Market Stability Reserve by the Commission in 2015 has stabilised the volatility of the price of Emissions Trading System (ETS) allowances. This justifies creating a specific risk category for ETS allowances under the A-SA, distinct from electricity, with a lower risk weight equal to 40% to better reflect the actual price volatility of this EU-specific commodity.

Article 325ax is amended to clarify the risk weights for sensitivities to vega risk factors.

The alternative internal model approach

Article 325az is amended to clarify the conditions that the institutions must comply with in order to be granted the permission to use the A-IMA for the calculation of own funds requirements for market risk.

Article 325ba is amended to introduce the formula for the aggregation of the own funds requirements calculated under the A-IMA.

Article 325bc is amended to introduce a RTS mandate for EBA to specify the criteria for the use of data inputs in the risk-measurement model.

Article 325be is amended to specify new powers for the competent authorities with regards to the assessment of the modellability of the risk factors performed by institutions using the A-IMA.

Article 325bf is amended to introduce new powers for competent authorities to address model deficiencies and with respect to the back-testing requirements performed by institutions using A-IMA.

Article 325bg is amended to introduce binding requirements on P&L attribution performed by institutions using the A-IMA.

Article 325bh is amended to introduce adjustments for calculating the own fund requirements for market risk for CIUs positions under the A-IMA, in particular to ensure that more CIUs could be eligible under the approach. Similarly to the amendments made to the CIU treatment under the A-SA, institutions are allowed, under specific conditions, to use data provided by relevant third-parties in the calculation of the own funds requirements under the look-through approach, and are required to apply the look-through approach with a minimum weekly frequency.

Article 325bi is amended to clarify the responsibilities of the risk control unit and the validation unit with respect to the risk management system.

Article 325bp is amended to further clarify the situations in which institutions are permitted to use an IRB model to estimate default probabilities and loss given default for the calculation of the own funds requirement for default risk.

Article 337, Article 338, Article 352 and Article 361 are amended to replace, or delete, provisions that are no longer relevant for using the SSA.

Use of internal models to calculate own funds requirements

Chapter 5 is deleted since the current internal model approach (IMA) used to calculate the own funds requirements for market risk is replaced by the A-IMA set out in Chapter 1b.

Delegated and Implementing acts

Given the uncertainty of whether major jurisdictions will deviate from the final Basel III standards in their implementation of FRTB and the importance of ensuring a level playing field in practice between institutions established in the Union and their international peers, Article 461a empowers the Commission to adopt delegated acts to amend the approaches to calculate the own funds requirements for market risk, and to amend the date of entry into application of these approaches in order to align them with international developments.

Credit valuation adjustment (CVA) risk framework

The credit valuation adjustment (CVA) is a fair-value accounting adjustment to the price of a derivative transaction, aiming to provision against potential losses due to the deterioration in the creditworthiness of the counterparty to that transaction. During the GFC, a number of systemically important banks incurred significant CVA losses on their derivatives portfolios because of the deterioration of many of their counterparties' creditworthiness at the same time. As a result, the BCBS introduced in 2011, as part of the first set of Basel III reforms, new standards to calculate capital requirements for CVA risk to ensure that banks' CVA risk would be covered with sufficient capital in the future. These Basel standards were transposed in Union law in 2013 through the CRR.

However, concerns were raised by banks and supervisors that the 2011 standards did not appropriately capture the actual CVA risk banks were exposed to. In particular, three specific criticisms were raised with respect to those standards: i) that the approaches set out in those standards lack risk-sensitivity, ii) that they do not recognise CVA models developed by banks for accounting purposes, and iii) that the approaches set out in those standards do not capture the market risk embedded in the derivative transactions with the counterparty. To address those concerns, the BCBS published revised standards in December 2017, as part of the final Basel III reforms, and further adjusted their calibration in a revised publication in July 2020. In order to align it with the 2020 BCBS standards, a number of amendments are made to the CRR.

In Article 381, a definition of the meaning of CVA risk is introduced to capture both the credit spread risk of an institution's counterparty and the market risk of the portfolio of transactions traded by that institution with that counterparty.

Article 382 is amended to clarify which securities financing transactions are subject to the own funds requirements for CVA risk. In addition, a new provision requiring institutions to report the results of the calculation of the own funds requirements for CVA risk for transactions exempted in accordance with that Article is introduced. It is additionally specified that institutions that hedge the CVA risk of those exempted transactions have the discretion to calculate own funds requirement for CVA risk for those transactions, taking into account the eligible hedges concerned. Finally, new mandates for the EBA are introduced to develop guidelines to help supervisors to identify excessive CVA risk and to develop an RTS to specify the conditions for assessing the materiality of CVA risk exposures arising from fair-valued securities financing transactions.

Article 382a is inserted to set out the new approaches institutions should use to calculate their own funds requirements for CVA risk, as well as the conditions for using a combination of those approaches.

Article 383 is replaced to introduce the general requirements for using the standardised approach for calculating the own funds requirements for CVA risk, as well as the definition of regulatory CVA for that purpose. Articles 383a to 383x are inserted to further specify the technical elements of the standardised approach.

Article 384 is replaced to introduce the basic approach for calculating the own funds requirements for CVA risk, in line with the Basel III standards.

Article 385 is replaced to introduce the simplified approach for calculating the own funds requirements for CVA risk, as well as the eligibility criteria for the use of simplified approach.

Finally, Article 386 is amended to reflect the new requirements applicable to eligible hedges for the purposes of the own fund requirements for CVA risk.

Minimum haircut floor framework for SFTs

Securities financing transactions (SFTs) play an essential role in the financial system of the Union by allowing financial institutions to manage their own liquidity position and support their securities market-making activities. SFTs are also important for central banks as those transactions enable them to transmit, via financial institutions, their monetary policy plans to the real economy. SFTs can, however, also enable market participants to recursively leverage their positions by reinvesting cash collateral and re-using non-cash collateral, respectively. To address the risk of a build-up of excessive leverage outside the banking sector, the Financial Stability Board (FSB) published in 2013 a recommendation[39] to its member jurisdictions to introduce minimum collateral haircuts for some non-centrally cleared SFTs traded between banks and non-banks. According to that recommendation, such minimum collateral haircuts should be introduced, at the discretion of each jurisdiction, either directly via a market regulation, or indirectly via a more punitive capital requirement; the latter was developed by the BCBS in 2017 as part of the final Basel III reforms.

The recommendations of EBA in its dedicated report[40] on the implementation of the minimum haircut floors framework for SFTs in Union law and of ESMA in its report[41] on SFTs and leverage in the EU, pointed out, however, that it was not clear what impact the application of such framework would have on institutions. Those recommendations also expressed concerns that the application of that framework to certain types of SFTs could create undesirable consequences to those financial activities. In addition, it is not yet clear whether it would be more appropriate to apply the framework to institutions as a more punitive own funds requirement, or rather as a market regulation. Applying the framework to institutions as a more punitive own funds requirement would allow institutions that would not comply with those minimum haircut floors to pursue those financial activities, subject to a penalty. Alternatively, applying the framework as a market regulation would ensure a level-playing field for all market participants should the Union decide to introduce a similar market regulation for relevant SFTs between non-banks, as also recommended by the FSB in its above mentioned 2013 report.

Against this background, Article 519c introduces a mandate for EBA to report, in close cooperation with ESMA, to the Commission on the appropriateness of implementing in the Union the minimum haircut floors framework applicable to SFTs. On the basis of this report, the Commission will, if appropriate, submit a legislative proposal to the European Parliament and to the Council.

Operational risk

New standardised approach to replace all existing approaches for operational risk

The BCBS has revised the international standard on operational risk in order to address weaknesses that emerged in the wake of the 2008-2009 financial crisis. Besides the lack of risk-sensitivity in the standardised approaches, a lack of comparability arising from a wide range of internal modelling practices under the advanced measurement approaches (AMA) was identified. Against this background, and in order to enhance the simplicity of the framework, all existing approaches for the calculation of the own funds requirements for operational were replaced by a single, non-model-based approach to be used by all institutions. Although the use of models, such as those developed under the AMA, is no longer possible under this new framework to determine own funds requirements for

[39] FSB: Strengthening Oversight and Regulation of Shadow Banking, 29 August 2013, available at: https://www.fsb.org/wp-content/uploads/r_130829b.pdf.

[40] European Banking Authority: Policy Advice on the Basel III Reforms: Operational Risk, EBA-OP-2019-09b, 2 August 2019.

[41] European Securities and Markets Authority: Report on securities financing transactions and leverage in the EU, October 2016.

operational risk, institutions will still have the discretion to use those models for the purpose of the internal capital adequacy assessment process (ICAAP).

The new standardised approach is implemented in the Union by replacing Part Three, Title III, of the CRR. In addition, further adjustments are made to several other articles in the CRR, mainly i) to introduce clear and harmonised definitions related to operational risk (Article 4(1), points (52a), (52b), and (52c)), as recommended by the EBA in its reply[42] to the Commission's 2019 Call for Advice, and ii) to reflect the replacement of Title III throughout the CRR (for instance, former references to Title III in Article 20 are deleted). Lastly, the EBA is mandated to report to the Commission on the use of insurance in the context of the revised operational risk framework (Article 519d). That report is needed as some concerns have emerged in the supervisory community as to whether the new standardised approach for operational risk may allow for regulatory arbitrage through the use of insurance.

Calculation of own funds requirements for operational risk

According to the final Basel III standards, the new standardised approach combines an indicator that relies on the size of the business of an institution (Business Indicator Component or BIC) with an indicator that takes into account the loss history of that institution. The revised Basel standard envisages a number of discretions on how the latter indicator may be implemented. Jurisdictions may disregard historical losses for the calculation of operational risk capital for all relevant institutions, or may take historical loss data additionally into account for institutions below a certain business size. For the calculation of the minimum own funds requirements, in order to ensure a level playing field within the Union and to simplify the calculation of operational risk capital, those discretions are exercised in a harmonised manner by disregarding historical operational loss data for all institutions.

The calculation of the BIC is set out in the new Chapter 1 of Title III (new Articles 312 to 315). In the Union, the minimum own funds requirements for operational risk will be solely based on the BIC (Article 312). The calculation of the BIC, which is based on the so-called business indicator, is set out in Article 313, while the determination of the business indicator, including its components and possible adjustments due to mergers, acquisitions or divestments, is set out in Articles 314 and 315.

Data collection and governance

The new Chapter 2 (new Articles 316 to 323) provides for the rules on data collection and governance. As a matter of proportionality, those requirements are split into rules that apply to all institutions, such as the provisions on the operational risk management framework (Article 323), and rules that are only relevant for institutions that also have to disclose historical loss data (Article 446(2)) and thus have to maintain a loss data set (Article 317). In the Union, in line with the EBA reply to the Commission's 2019 Call for Advice, all institutions with a business indicator equal to or above EUR 750 million will be required to maintain a loss data set and to calculate their annual operational risk losses for disclosure purposes. To ensure that the new framework remains proportionate, competent authorities will be able to grant a waiver from that requirement, unless the business indicator of an institution exceeds EUR 1 billion (Article 316). With a view to ensure a certain stability over time, in

[42] EBA, Policy advice on the Basel reforms: Operational Risk, EBA/OP/2019/09b, 2 August 2019, available at: https://www.eba.europa.eu/sites/default/documents/files/documents/10180/2886865/5db69327-7d3f-4e6c-9ac9-fc54430781eb/Policy%20Advice%20on%20Basel%20III%20reforms%20-%20Operational%20Risk.pdf?retry=1

particular to avoid that temporary drops in the size of the business indicator unduly affect that assessment, the relevant business indicator will be the highest business indicator reported over the last two years.

Elements that are relevant for the calculation of the annual operational risk loss are further specified in Articles 318 to 321. Article 318 sets out the determination of the ‘gross loss’ and the ‘net loss’ and Article 319 contains the relevant loss data thresholds of EUR 20 000 and EUR 100 000. Certain exceptional operational risk events that are no longer relevant to an institution’s risk profile may be disregarded, provided that all related conditions are met and the institution’s supervisor has granted the permission to do so (Article 320). In the same vein, an institution may have to include additional losses, for instance, related to acquired or merged entities (Article 321).

The accuracy and comprehensiveness of an institutions loss data are essential. Therefore, supervisors will have to periodically review the quality of the loss data (Article 322).

Leverage ratio

Calculation of the exposure value of derivatives

Since the adoption of Regulation (EU) 2019/876, the BCBS has further revised one specific aspect of its leverage ratio framework. To facilitate the provision of client-clearing services, the treatment of client-cleared derivatives for leverage ratio purposes was amended in June 2019[43]. Under the revised rules, the treatment of those derivatives is generally aligned with the treatment envisaged under the standardised approach for counterparty credit risk (SA-CCR) in the risk-based framework. In its February 2021 report on the leverage ratio[44], the Commission concluded that it was appropriate to adjust the calculation of the total exposure measure to align the treatment of client-cleared derivatives with the internationally agreed standards. Therefore, Article 429c is amended accordingly.

Calculation of the exposure value of off-balance-sheet items

In light of the proposed amendments to Articles 4 and 111(1) of the CRR, there is no need any more to set out a minimum conversion factor of 10% for certain off-balance-sheet items in the leverage ratio framework. Therefore, the derogation set out in Article 429f(3) is deleted.

Regular way purchases and sales awaiting settlement

The provisions related to regular-way purchases and sales awaiting settlement are amended to better align those rules with the Basel III standards, notably by clarifying that those provisions apply to financial assets, rather than to securities only. Articles 429(6) and 429g(1) of the CRR are amended accordingly.

Environmental, social and governance risks (ESG risks)

Institutions play an instrumental role in the ambition of the Union to promote a long-term transition to sustainable development in general and, in particular, to support a just transition towards net-zero greenhouse gas emissions in the economy of the Union by 2050. That transition entails new risks that need to be understood and appropriately managed at all levels.

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43 Basel Committee on Banking Supervision (2019): Leverage ratio treatment of client cleared derivatives, June 2019, available at: https://www.bis.org/bcbs/publ/d467.pdf

44 Report from the Commission to the European Parliament and the Council on a possible extension of the leverage ratio buffer framework to O-SIIs and on the definition and calculation of the total exposure measure, including the treatment of central bank reserves, February 2021, available at: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52021DC0062

The accelerated transition towards a more sustainable economy may have a considerable impact on companies, increasing the risks to institutions individually and to the overall financial stability. Human behavioural impacts on climate, like the emissions of greenhouse gases, or the continuation of unsustainable economic practices, are drivers of physical risks potentially exacerbating the likelihood of environmental hazards and their socio-economic impacts. Institutions are also exposed to those physical risks, which hold a trade-off relationship with transition risks as, all other things being equal, physical risks are expected to decrease when transition policies are implemented. However, the opposite may occur when no action is taken, meaning, when the transition risk is low and the implementation of transition-related policies takes longer, the more physical risks will increase.

To promote an adequate understanding and management of the sustainability risks, commonly referred as environmental, social and governance (ESG) risks, institutions established in the Union need to identify systematically, disclose and manage those risks at their individual level. The relative novelty of ESG risks and their specificities mean that the understanding of those risks can differ significantly across institutions.

Therefore, Article 4 is amended to introduce new harmonised definitions of the different types of risks in the universe of ESG risks (Article 4(1), points 52d to 52i). The definitions are aligned with those proposed by EBA in its report dedicated to ESG risks.

To allow for better supervision of ESG risks, Article 430 is amended to require institutions to report their exposure to ESG risks to their competent authorities.

Finally, in order to better align the timelines of any changes to the prudential rules that may be needed, Article 501c is amended to advance the deadline for EBA to deliver its report on the prudential treatment of these exposures from 2025 to 2023. Within the mandate in Article 501c, the EBA should assess exposures to assets and activities in the energy and resource efficiency sectors, as well as in the infrastructure and transport fleets sectors. The assessment should also cover the possibility of a targeted calibration of a risk weights for items associated with particularly high exposure to climate risk, including assets or activities in the fossil fuel sector and in high climate impact sectors. If found to be justified, the report by the EBA should describe a range of options for applying a dedicated prudential treatment of exposures subject to impacts from environmental and social factors.

Integrated supervisory reporting system and data sharing

Since 2018, the EBA, in cooperation with the ECB and national competent authorities, has been working on the creation of the European Centralised Infrastructure for Supervisory Data (EUCLID) to aggregate in a centralised integrated system the reporting information shared by supervisors on the largest institutions established in the Union. This system will be particularly useful to feed public reports and analysis with aggregated data and risk indicators on the overall EU banking sector. Article 430c currently mandates the EBA to prepare a feasibility study for the development of a consistent and integrated system for collecting statistical, resolution and prudential data, as well as to involve the relevant authorities in the preparation of the study. In March 2021, the EBA published a discussion paper on that feasibility study, seeking stakeholders’ input by 11 June 2021. In accordance with Article 430c(3), once the feasibility study is finalised by EBA, the Commission will assess whether to introduce at a later stage potential amendments to the reporting requirements mandated in Part Seven A of the CRR.

Disclosures

Enhanced transparency and proportionality in disclosure requirements

In view of the changes made to the CRR to implement the final Basel III standards, as well as the need to further reduce the administrative costs related to disclosures and to facilitate the access to information disclosed by institutions, several changes are made to Part Eight of the CRR.

Article 433 is amended to empower the EBA to centralise the publication of annual, semiannual and quarterly institutions' prudential disclosures. This proposal aims to make prudential information readily available through a single electronic access point, thus addressing the current fragmentation with a view to increase transparency and comparability of disclosures to the benefit of all market participants. EBA's centralised publication would take place at the same time the institutions publish their financial statements or reports, or as soon as possible thereafter. This proposal is fully consistent with the Capital Market Union Action Plan and it is an intermediary step towards the future development of an EU-wide single access point for companies' financial and sustainable investment-related information.

Article 434 is amended to reduce the administrative burden related to disclosures, especially for small and non-complex institutions. The rationale of this provision leverages on the progress made by the EBA and the competent authorities in the creation of an infrastructure that aggregates supervisory reporting (EUCLID). The proposal enhances proportionality mandating the EBA to publish disclosures of small and non-complex institutions based on supervisory reporting information. This way, small and non-complex institutions are only required to report to their supervisors, and not to publish relevant disclosures.

Articles 438 and 447 are amended to include disclosures obligations for institutions that use internal model and thus need to disclose the total risk exposures amounts calculated according to the full standardised approach as compared to the actual risk-weighted assets at the risk level, and for credit risk at asset class and sub-asset class level. This implements the relevant Basel III standard that requires banks to compare modelled and standardised RWA at risk level. Articles 433a, 433b and 433c concerning the frequency of disclosures are amended accordingly.

Articles 433b and 433c are amended to include the obligation for small and non-complex institutions, as well as for other non-listed institutions, to disclose on an annual basis information on the amount and quality of performing, non-performing and forborne exposures for loans, debt securities and off-balance-sheet exposures, and information on past due exposures. The proposed amendments are in line with the 2017 Council action plan on NPLs[45], which invited the EBA to implement by the end of 2018 enhanced disclosure requirements on asset quality and non-performing loans for all institutions. In addition, the changes would ensure full consistency with the Communication on "Tackling non-performing loans in the aftermath of the COVID-19 pandemic"[46]. The extension of the disclosure requirements in Article 442, points (c) and (d), to small and non-complex institutions and to other non-listed institutions does not create any additional burden for these institutions for two reasons. First, these institutions are already disclosing NPLs related information based on the EBA Guidelines on NPLs disclosure[47], which followed the 2017 Council action plan and, currently, are reflected in the Commission Implementing Regulation (EU) 2021/637 of 15

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[45] ECOFIN Council "Action Plan to Tackle Non-Performing Loans in Europe", July 2017. Council conclusions on Action plan to tackle non-performing loans in Europe - Consilium (europa.eu)

[46] Communication from the Commission to the European Parliament, the Council and the European Central Bank on "Tackling non-performing loans in the aftermath of the COVID-19 pandemic" COM/2020/822 final.

[47] Guidelines EBA/GL/2018/10 of the European Banking Authority of 17 December 2018 on disclosure of non-performing and forborne exposures.

March 2021[48]. Second, once the centralisation of disclosures through the EBA web-platform is in place, information on NPLs could be extracted from supervisory reporting, thus reducing the burden for all institutions and eliminating any burden for small and non-complex ones.

Articles 445 and 455 introduce new disclosure requirements the institutions calculating their own funds requirements for market risk using one of the standardised approaches and, respectively, the A-IMA, need to comply with.

Article 445a is inserted to introduce new disclosure requirements for own funds requirements for CVA risk.

Article 446 is amended to introduce the revised disclosure requirements for operational risk.

In the area of disclosures, the CRR II already introduced provisions aimed at improving the capture of ESG risks. In this regard, large institutions with publicly listed issuances will start disclosing information on ESG risks from June 2022 onwards. However, the immediate effectiveness of these provisions is limited, as a large number of institutions remains outside of the scope of the CRR disclosure rules. Article 449a is therefore amended to extend the requirements related to the disclosure of ESG risks to all institutions, while respecting the proportionality principle.

Empowerments to EBA

The proposal expands the scope of the existing EBA mandate under Article 434a. In addition to establish and develop uniform disclosure formats, the proposed amendments to Article 434a require EBA to set up a policy on disclosures' resubmissions and on the necessary IT solutions for centralising the disclosures.

Definition of 'small and non-complex institution'

The proposal amends the definition of the term 'small and non-complex institution', set out in Article 4(1), point (145), by allowing institutions to exclude derivatives transactions concluded with non-financial clients and derivatives transactions used to hedge those transactions, subject to a limit.

CIUs with an underlying portfolio of euro area sovereign bonds

Article 506a of Regulation (EU) 2021/558 mandated the Commission to publish by 31 December 2021 a report assessing whether it is necessary to make changes to the regulatory framework "to promote the market for, and bank purchases of, exposures in the form of units or shares in CIUs with an underlying portfolio consisting exclusively of sovereign bonds of Member States whose currency is the euro, where the relative weight of each Member States' sovereign bonds in the total portfolio of the CIU is equal to the relative weight of each Member States' capital contribution to the ECB".

Article 132(4) of the CRR provides for a "look-through approach", whereby the investor institution may "look through to the underlying exposures [of a CIU] in order to calculate an average risk weight for its exposures in the form of units or shares in the CIUs" in accordance

[48] Commission Implementing Regulation (EU) 2021/637 of 15 March 2021 laying down implementing technical standards with regard to public disclosures by institutions of the information referred to in Titles II and III of Part Eight of Regulation (EU) No 575/2013 of the European Parliament and of the Council and repealing Commission Implementing Regulation (EU) No 1423/2013, Commission Delegated Regulation (EU) 2015/1555, Commission Implementing Regulation (EU) 2016/200 and Commission Delegated Regulation (EU) 2017/2295 (Text with EEA relevance) OJ L 136, 21.4.2021, p. 1–327.

with the methods set out in the CRR. This is subject to the condition that the investor institution be "aware" of the CIU's underlying exposures.

Hence, the current regulatory regime allows investor institutions to apply to the units or shares in the CIU the same risk weights that would apply to a direct investment in the sovereign bonds of Member States. Given that such sovereign exposures already attract a beneficial regulatory capital treatment, it does not seem necessary to make changes to the prudential framework to promote the market for CIUs with this type of underlying or, in particular, to accommodate the specific structure referred by Article 506a of Regulation (EU) 2021/558.

Furthermore, with the recent and planned issuance of bonds under the NextGenerationEU programme, it would appear there is no longer an immediate need for the creation of the abovementioned structure.

Additional supervisory powers to impose restrictions on distributions by institutions

Pursuant to Article 518b, the Commission is required to report to the European Parliament and to the Council by 31 December 2021 on whether exceptional circumstances that trigger serious economic disturbance in the orderly functioning and integrity of financial markets justify during such periods, granting additional binding powers to competent authorities to impose restrictions on distributions by institutions.

In response to the economic and financial distress caused by the COVID-19 pandemic, the Commission, the EBA, the ECB, the ESRB and most national competent authorities urged institutions to refrain from dividend distribution or share buy-backs and to adopt a conservative approach to variable remunerations. Preserving capital resources to support the real economy and absorb losses has been the common objective during the exceptional circumstances in 2020 and 2021.

The recommendations issued by authorities across the Member States in line with agreed EU stances have led to the desired effects and channelled capital resources in ways that help the banking system to support the real economy, as recent analysis by the ECB and a stock-take by EBA suggest. Consequently, when asked on whether the considered they would need additional powers in the area restrictions on distributions, competent authorities were of the view that the powers they currently have at their disposal are sufficient.

At the current juncture, the Commission therefore does not see a need for additional supervisory powers to be granted to the competent authorities to impose restrictions on distributions by institutions in exceptional circumstances. The issue of macroprudential oversight and coordination of such restrictions in exceptional circumstances in the future will be considered in the forthcoming review of the macroprudential framework.

Prudential treatment of crypto assets

In recent years, financial markets have witnessed a rapid increase in activity related to so-called crypto assets and a progressively increased involvement of institutions in that activity. While crypto assets share certain common characteristics with more traditional financial assets, some of their features are significantly different. As a consequence, it is unclear whether the existing prudential rules would adequately capture the risks inherent in those assets. Since the BCBS only recently started exploring the question of whether a dedicated treatment should be developed for those assets, and if so, what should that treatment be, it was not possible to include specific measures on this topic in this proposal. Instead, the Commission is asked to review whether a dedicated prudential treatment for crypto assets would be needed and to adopt, if appropriate, a legislative proposal to this end, taking into account the work undertaken by the BCBS.

2021/0342 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 575/2013 as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor

(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 Economic and Social Committee[49],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) In response to the global financial crisis, the Union embarked on a wide-ranging reform of the prudential framework for institutions aimed at increasing the resilience of the EU banking sector. One of the main elements of the reform consisted in implementing international standards agreed by the Basel Committee for Banking Supervision (BCBS), specifically the so-called "Basel III reform". Thanks to this reform, the EU banking sector entered the COVID-19 crisis on a resilient footing. However, while the overall level of capital in EU institutions is now satisfactory on average, some of the problems that were identified in the wake of global financial crisis have not yet been addressed.

(2) To address those problems, provide legal certainty and signal our commitment to our international partners in the G20, it is of utmost importance to implement the outstanding elements of the Basel III reform faithfully. At the same time, the implementation should avoid a significant increase in overall capital requirements for the EU banking system on the whole and take into account specificities of the EU economy. Where possible, adjustments to the international standards should be applied on a transitional basis. The implementation should help avoid competitive disadvantages for EU institutions, in particular in the area of trading activities, where EU institutions directly compete with their international peers. Furthermore, the proposed approach should be coherent with the logic of the Banking Union and avoid further fragmentation of the Single Market for banking. Finally, it should ensure proportionality of the rules and aim at further reducing compliance costs, in particular for smaller institutions, without loosening the prudential standards.

[49] OJ C , , p. .

(3) Regulation (EU) No 575/2013 enables institutions to calculate their capital requirements either by using standardised approaches, or by using internal model approaches. Internal model approaches allow institutions to estimate most or all the parameters required to calculate capital requirements on their own, whereas standardised approaches require institutions to calculate capital requirements using fixed parameters, which are based on relatively conservative assumptions and laid down in Regulation (EU) No 575/2013. The Basel Committee decided in December 2017 to introduce an aggregate output floor. That decision was based on an analysis carried out in the wake of the financial crisis of 2008-2009, which revealed that internal models tend to underestimate the risks that institutions are exposed to, especially for certain types of exposures and risks, and hence, tend to result in insufficient capital requirements. Compared to capital requirements calculated using the standardised approaches, internal models produce, on average, lower capital requirements for the same exposures.

(4) The output floor represents one of the key measures of the Basel III reforms. It aims at limiting the unwarranted variability in the regulatory capital requirements produced by internal models and the excessive reduction in capital that an institution using internal models can derive relative to an institution using the revised standardised approaches. Those institutions can do so by setting a lower limit to the capital requirements that are produced by institutions' internal models to 72.5% of the capital requirements that would apply if standardised approaches were used by those institutions. Implementing the output floor faithfully should increase the comparability of the institutions' capital ratios, restore the credibility of internal models and ensure that there is a level playing field between institutions that use different approaches to calculate capital requirements.

(5) In order to avoid fragmentation of the internal market for banking, the approach for the output floor should be coherent with the principle of risk aggregation across different entities within the same banking group and the logic of consolidated supervision. At the same time, the output floor should address risks stemming from internal models in both home and host Member States. The output floor should therefore be calculated at the highest level of consolidation in the Union, whereas subsidiaries located in other Member States than the EU parent should calculate, on a sub-consolidated basis, their contribution to the output floor requirement of the entire banking group. That approach should avoid unintended impacts and ensure a fair distribution of the additional capital required by the application of the output floor between group entities in home and host Member States according to their risk profile.

(6) The Basel Committee has found the current standardised approach for credit risk (SA-CR) to be insufficiently risk sensitive in a number of areas, leading to inaccurate or inappropriate – either too high or too low – measurement of credit risk and hence, of capital requirements. The provisions regarding the SA-CR should therefore be revised to increase the risk sensitivity of that approach in relation to several key aspects.

(7) For rated exposures to other institutions, some of the risk weights should be recalibrated in accordance with the Basel III standards. In addition, the risk weight treatment for unrated exposures to institutions should be rendered more granular and decoupled from the risk weight applicable to the central government of the Member State in which the bank is established, as no implicit government support for institutions is assumed.

(8) For subordinated debt and equity exposures, a more granular and stringent risk weight treatment is necessary to reflect the higher loss risk of subordinated debt and equity exposures when compared to debt exposures, and to prevent regulatory arbitrage between the banking book and the trading book. Union institutions have long-standing, strategic equity investments in financial and non-financial corporates. As the standard risk weight for equity exposures increases over a 5-year transition period, existing strategic equity holdings in corporates and insurance undertakings under significant influence of the institution should be grandfathered to avoid disruptive effects and to preserve the role of Union institutions as long-standing, strategic equity investors. Given the prudential safeguards and supervisory oversight to foster financial integration of the financial sector, however, for equity holdings in other institutions within the same group or covered by the same institutional protection scheme, the current regime should be maintained. In addition, to reinforce private and public initiatives to provide long-term equity to EU corporates, be they listed or unlisted, investments should not be considered as speculative where they are made with the firm intention of the institution's senior management to hold it for three or more years.

(9) To promote certain sectors of the economy, the Basel III standards provide for a supervisory discretion to enable institutions to assign, within certain limits, a preferential treatment to equity holdings made pursuant to 'legislative programmes' that entail significant subsidies for the investment and involve government oversight and restrictions on the equity investments. Implementing that discretion in the Union should also help fostering long-term equity investments.

(10) Corporate lending in the Union is predominantly provided by institutions which use the internal ratings based (IRB) approaches for credit risk to calculate their capital requirements. With the implementation of the output floor, those institutions will also need to apply the SA-CR, which relies on credit assessments by external credit assessment institutions ('ECAI') to determine the credit quality of the corporate borrower. The mapping between external ratings and risk weights applicable to rated corporates should be more granular, to bring such mapping in line with the international standards on that matter.

(11) Most EU corporates, however, do not seek external credit ratings, in particular due to cost considerations. To avoid disruptive impacts on bank lending to unrated corporates and to provide enough time to establish public or private initiatives aimed at increasing the coverage of external credit ratings, it is necessary to provide for a transitional period for such increase in the coverage. During that transitional period, institutions using IRB approaches should be able to apply a favourable treatment when calculating their output floor for investment grade exposures to unrated corporates, whilst initiatives to foster widespread use of credit ratings should be established. That transitional arrangement should be coupled with a report prepared by the European Banking Authority ('EBA'). After the transition period, institutions should be able to refer to credit assessments by ECAIs to calculate the capital requirements for most of their corporate exposures. To inform any future initiative on the set-up of public or private rating schemes, the European Supervisory Authorities (ESAs) should be requested to prepare a report on the impediments to the availability of external credit ratings by ECAIs, in particular for corporates, and on possible measures to address those impediments. In the meanwhile, the European Commission stands ready to provide technical support to Member States via its Technical Support Instrument in this area, e.g. to formulate strategies on increasing the rating-penetration of their

unlisted corporates or to explore best practices on setting up entities capable of providing ratings or providing related guidance to corporates.

(12) For both residential and commercial real estate exposures, more risk-sensitive approaches have been developed by the Basel Committee to better reflect different funding models and stages in the construction process.

(13) The financial crisis of 2008-2009 revealed a number of shortcomings of the current standardised treatment of real estate exposures. Those shortcomings have been addressed in the Basel III standards. In fact, the Basel III standards introduced income producing real estate ('IPRE') exposures as a new sub-category of the corporate exposure class which is subject to a dedicated risk weight treatment to reflect more accurately the risk associated with those exposures, but also to improve consistency with the treatment of IPRE under the Internal Rating Based Approach ('IRBA') referred to in Part III, Title II, Chapter 3 of Regulation (EU) No 575/2013.

(14) For general residential and commercial real estate exposures, the loan splitting approach in Articles 124-126 of the Regulation should be kept, as that approach is sensitive to the type of borrower and reflects the risk mitigating effects of the real estate collateral in the applicable risk weights, even in case of high 'loan-to-value' (LTV) ratios. Its calibration, however, should be adjusted in accordance with the Basel III standards as it has been found to be too conservative for mortgages with very low LTV ratios.

(15) To ensure that the impacts of the output floor on low-risk residential mortgage lending by institutions using IRB approaches are spread over a sufficiently long period and thus avoid disruptions to that type of lending that could be caused by sudden increases in own funds requirements, it is necessary to provide for a specific transitional arrangement. For the duration of the arrangement, when calculating the output floor, IRB institutions should be able to apply a lower risk weight to the part of their residential mortgage exposures that is considered secured by residential property under the revised SA-CR. To ensure that the transitional arrangement is available only to low-risk mortgage exposures, appropriate eligibility criteria, based on established concepts used under the SA-CR, should be set. The compliance with those criteria should be verified by competent authorities. Because residential real estate markets may differ from one Member States to another, the decision on whether to activate the transitional arrangement should be left to individual Member States. The use of the transitional arrangement should be monitored by EBA.

(16) As a result of the lack of clarity and risk-sensitivity of the current treatment of speculative immovable property financing, capital requirements for those exposures are currently often deemed to be too high or too low. That treatment therefore should be replaced by a dedicated treatment for ADC exposures, comprising loans to companies or special purpose vehicles financing any of the land acquisition for development and construction purposes, or development and construction of any residential or commercial immovable property.

(17) It is important to reduce the impact of cyclical effects on the valuation of property securing a loan and to keep capital requirements for mortgages more stable. A property's value recognised for prudential purposes should therefore not exceed the average value of a comparable property measured over a sufficiently long monitoring period, unless modifications to that property unequivocally increase its value. To avoid unintended consequences for the functioning of the covered bond markets, competent authorities may allow institutions to revalue immovable property on a

regular basis without applying those limits to value increases. Modifications that improve the energy efficiency of buildings and housing units should be considered as value increasing.

(18) The specialised lending business is conducted with special purpose vehicles that typically serve as borrowing entities, for which the return on investment is the primary source of repayment of the financing obtained. The contractual arrangements of the specialised lending model provide the lender with a substantial degree of control over the assets and the primary source of repayment of the obligation is the income generated by the assets being financed. To reflect the associated risk more accurately, those contractual arrangements should therefore be subject to specific capital requirements for credit risk. In line with the internationally agreed Basel III standards on assigning risk weights to specialised lending exposures, a dedicated specialised exposures class should be introduced under the SA-CR, thereby improving consistency with the already existing specific treatment of specialised lending under the IRB approaches. A specific treatment for specialised lending exposures should be introduced, whereby a distinction should be made between ‘project finance’, ‘object finance’ and ‘commodities finance’ to better reflect the inherent risks of those sub-classes of the specialised exposures class. Like for exposures to corporates, two approaches to assign risk weights should be implemented, one for jurisdictions allowing the use of external ratings for regulatory purposes and one for jurisdictions that do not allow it.

(19) While the new standardised treatment for unrated specialised lending exposures laid down in Basel III standards is more granular than the current standardised treatment of exposures to corporates under this Regulation, the former is not sufficiently risk-sensitive to reflect the effects of comprehensive security packages and pledges usually associated with these exposures in the Union, which enable lenders to control the future cash flows to be generated over the life of the project or asset. Due to the lack of external rating coverage of specialised lending exposures in the Union, the treatment for unrated specialised lending exposures laid down in Basel III standards may also create incentives for institutions to stop financing certain projects or take on higher risks in otherwise similarly treated exposures which have different risk profiles. Whereas the specialised lending exposures are mostly financed by institutions using the IRB approach that have in place internal models for these exposures, the impact may be particularly significant in the case of ‘object finance’ exposures, which could be at risk for discontinuation of the activities, in the particular context of the application of the output floor. To avoid unintended consequences of the lack of risk-sensitivity of the Basel treatment for unrated object finance exposures, object finance exposures that comply with a set of criteria capable to lower their risk profile to ‘high quality’ standards compatible with prudent and conservative management of financial risks, should benefit from a reduced risk weight. EBA shall be entrusted to develop draft regulatory technical standards specifying the conditions for institutions to assign an object finance specialised lending exposure to the ‘high quality’ category with a risk weight similar to ‘high quality’ project finance exposures under the SA-CR. Institutions established in jurisdictions that allow the use of external ratings should assign to their specialised lending exposures the risk weights determined only by the issue-specific external ratings, as provided by the Basel III framework.

(20) The classification of retail exposures under the SA-CR and the IRB approaches should be further aligned to ensure a consistent application of the correspondent risk weights to the same set of exposures. In line with the Basel III standards, rules should be laid

down for a differentiated treatment of revolving retail exposures that meet a set of conditions of repayment or usage capable to lower their risk profile. Those exposures shall be defined as exposures to ‘transactors’. Exposures to one or more natural persons that do not meet all the conditions to be considered retail exposures should be risk weighted at 100% under the SA-CR.

(21) Basel III standards introduce a credit conversion factor of 10% for unconditionally cancellable commitments ('UCC') in the SA-CR. This is likely to result in a significant impact on obligors that rely on the flexible nature of the UCC to finance their activities when dealing with seasonal fluctuations in their businesses or when managing unexpected short-term changes in working capital needs, especially during the recovery from the COVID-19 pandemic. It is thus appropriate to provide for a transitional period during which institutions will continue to apply a null credit conversion factor to their UCC, and, afterwards, to assess whether a potential gradual increase of the applicable credit conversion factors is warranted to allow institutions to adjust their operational practices and products without hampering credit availability to institutions’ obligors. That transitional arrangement should be coupled with a report prepared by EBA.

(22) The financial crisis of 2008-2009 has revealed that, in some cases, credit institutions have also used IRB approaches on portfolios unsuitable for modelling due to insufficient data, which had detrimental consequences for the robustness of the results and thus, for the financial stability. It is therefore appropriate not to oblige institutions to use the IRB approaches for all of their exposures and to apply the roll-out requirement at the level of exposure classes. It is also appropriate to restrict the use of IRB Approaches for exposure classes where robust modelling is more difficult to increase the comparability and robustness of capital requirements for credit risk under the IRB approaches.

(23) Institutions’ exposures to other institutions, other financial sector entities and large corporates typically exhibit low levels of default. For such low-default portfolios, it has been shown that it is difficult for institutions to obtain reliable estimates of a key risk parameter of the IRB approach, the loss given default (‘LGD’), due to an insufficient number of observed defaults in those portfolios. This difficulty has resulted in an undesirable level of dispersion across credit institutions in the level of estimated risk. Institutions should therefore use regulatory LGD values rather than internal LGD estimates for those low-default portfolios.

(24) Institutions that use internal models to estimate the own funds requirements for credit risk for equity exposures typically base their risk assessment on publically available data, to which all institutions can be assumed to have identical access. Under those circumstances, differences in own funds requirements cannot be justified. In addition, equity exposures held in the banking book form a very small component of institutions’ balance sheets. Therefore, to increase the comparability of institutions’ own funds requirements and to simplify the regulatory framework, institutions should calculate their own funds requirements for credit risk for equity exposures using the SA-CR, and the IRB approach should be disallowed for that purpose.

(25) It should be ensured that the estimates of the probability of default (‘PD’), the LGD and the credit conversion factors (‘CCF’) of individual exposures of institutions that are allowed to use internal models to calculate capital requirements for credit risk do not reach unsuitably low levels. It is therefore appropriate to introduce minimum values for own estimates and to oblige institutions to use the higher of their own

estimates of risk parameters and those minimum values. Such risk parameters' 'input floors' should constitute a safeguard to ensure that capital requirements do not fall below prudent levels. In addition, they should mitigate model risk due to such factors as incorrect model specification, measurement error and data limitations. They would also improve the comparability of capital ratios across institutions. In order to achieve those results, input floors should be calibrated in a sufficiently conservative manner.

(26) Risk parameter floors that are calibrated too conservatively may indeed discourage institutions from adopting the IRB approaches and the associated risk management standards. Institutions may also be incentivised to shift their portfolios to higher risk exposures to avoid the constraint imposed by the risk parameter floors. To avoid such unintended consequences, risk parameter floors should appropriately reflect certain risk characteristics of the underlying exposures, in particular by taking on different values for different types of exposure where appropriate.

(27) Specialised lending exposures have risk characteristics that differ from general corporate exposures. It is thus appropriate to provide for a transitional period during which the LGD input floor applicable to specialised lending exposures is reduced.

(28) In accordance with the Basel III standards, the IRB treatment for the sovereign exposure class should remain largely untouched, due to the special nature and risks related to the underlying obligors. In particular sovereign exposures should not be subject to the risk parameters input floors.

(29) To ensure a consistent approach for all RGLA-PSE exposures, a new RGLA-PSA exposure class should be created, independent from both sovereign and institutions exposure classes, and which should all be subject to the input floors provided by the new rules.

(30) It should be clarified how the effect of a guarantee could be recognised for a guaranteed exposure where the underlying exposure is treated under the IRB approach under which modelling for PD and LGD is allowed but where the guarantor belongs to a type of exposures for which modelling the LGD, or the IRB approach is not allowed. In particular, the use of the substitution approach, whereby the risk parameters of the underlying exposures are substituted with the ones of the guarantor, or of a method whereby the PD or LGD of the underlying obligor are adjusted using a specific modelling approach to take into account the effect of the guarantee, should not lead to an adjusted risk weight that is lower than the risk weight applicable to a direct comparable exposure to the guarantor. Consequently, where the guarantor is treated under the SA-CR, recognition of the guarantee under the IRB approach should lead to assigning the SA-CR risk weight of the guarantor to the guaranteed exposure.

(31) Regulation (EU) 2019/876 of the European Parliament and of the Council[50] amended Regulation (EU) No 575/2013 to implement the final FRTB standards only for reporting purposes. The introduction of binding capital requirements based on those standards was left to a separate ordinary legislative initiative, upon the assessment of their impacts for Union banks.

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[50] 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).

(32) In order to complete the reform agenda introduced after the financial crisis of 2008-2009 and to address the deficiencies in the current market risk framework, binding capital requirements for market risk based on the final FRTB standards should be implemented in Union law. Recent estimates of the impact of the final FRTB standards on Union banks have shown that the implementation of those standards in the Union will lead to a large increase in the own funds requirements for market risk for certain trading and market making activities which are important to the EU economy. To mitigate that impact and to preserve the good functioning of financial markets in the Union, targeted adjustments should be introduced to the transposition of the final FRTB standards in Union law.

(33) As requested under Regulation (EU) 2019/876, the Commission should take into account the principle of proportionality in the calculation of the capital requirements for market risk for institutions with medium-sized trading book businesses, and calibrate those requirements accordingly. Therefore, institutions with medium-sized trading books should be allowed to use a simplified standardised approach to calculate own funds requirements for market risk, in line with the internationally agreed standards. In addition, the eligibility criteria to identify institutions with medium-sized trading books should remain consistent with the criteria set out in Regulation (EU) 2019/876 for exempting such institutions from the FRTB reporting requirements set out in that Regulation.

(34) Institutions' trading activities in wholesale markets can easily be carried out across borders, including between Member States and third countries. The implementation of the final FRTB standards should therefore converge as much as possible across jurisdictions, both in terms of substance and timing. If that would not be the case, it would be impossible to ensure an international level playing field for those activities. The Commission should therefore monitor the implementation of those standards in other BCBS member jurisdictions and, where necessary, should take steps to address potential distortions of those rules.

(35) The BCBS has revised the international standard on operational risk to address weaknesses that emerged in the wake of the 2008-2009 financial crisis. Besides a lack of risk-sensitivity in the standardised approaches, a lack of comparability arising from a wide range of internal modelling practices under the Advanced Measurement Approach were identified. Therefore, and in order to simplify the operational risk framework, all existing approaches for estimating the operational risk capital requirements were replaced by a single non-model-based method. Regulation (EU) No 575/2013 should be aligned with the revised Basel standards to ensure a level playing field internationally for institutions established inside the Union but also operating outside the Union, and to ensure that the operational risk framework at Union level remains effective.

(36) The new standardised approach for operational risk introduced by the BCBS combines an indicator that relies on the size of the business of an institution with an indicator that takes into account the loss history of that institution. The revised Basel standards envisage a number of discretions on how the indicator that takes into account the loss history of an institution may be implemented. Jurisdictions may disregard historical losses for the calculation of operational risk capital for all relevant institutions, or may take historical loss data into account even for institutions below a certain business size. To ensure a level playing field within the Union and to simplify the calculation of operational risk capital, those discretions should be exercised in a harmonised manner

for the minimum own funds requirements by disregarding historical operational loss data for all institutions.

(37) Information on the amount and on the quality of performing, non-performing and forborne exposures, as well as an ageing analysis of accounting past due exposures should also be disclosed by small and non-complex institutions and by other non-listed credit institutions. This disclosure obligation does not create an additional burden on these credit institutions, as the disclosure of such limited set of information has already been implemented by EBA based on the 2017 Council Action Plan on Non-Performing Loans (NPLs)[51], which invited EBA to enhance disclosure requirements on asset quality and non-performing loans for all credit institutions. This is also fully consistent with the Communication on tackling non-performing loans in the aftermath of the COVID-19 pandemic[52].

(38) It is necessary to reduce the compliance burden for disclosure purposes and to enhance the comparability of disclosures. EBA should therefore establish a centralised web-based platform that enables the disclosure of information and data submitted by institutions. That centralised web-platform should serve as a single access point on institutions' disclosures, while ownership of the information and data and the responsibility for their accuracy should remain with the institutions that produce it. The centralisation of the publication of disclosed information should be fully consistent with the Capital Market Union Action Plan and represents further step towards the development of an EU-wide single access point for companies' financial and sustainable investment-related information.

(39) To allow for a greater integration of supervisory reporting and disclosures, EBA should publish institutions' disclosures in a centralised manner, while respecting the right of all institutions to publish data and information themselves. Such centralised disclosures should allow EBA to publish the disclosures of small and non-complex institutions, based on the information reported by those institutions to competent authorities and should thus significantly reduce the administrative burden to which those small and non-complex institutions are subject. At the same time, the centralisation of disclosures should have no cost impact for other institutions, and increase transparency and reduce the cost for market participants to access prudential information. Such increased transparency should facilitate comparability of data across institutions and promote market discipline.

(40) To ensure convergence across the Union and a uniform understanding of the environmental, social and governance (ESG) factors and risks, general definitions should be laid down. The exposure to ESG risks is not necessarily proportional to an institution's size and complexity. Level of exposures across the Union are also quite heterogeneous, with some countries showing potential mild transitional impacts and others showing potential high transitional impacts on exposures related to activities that have a significant negative impact on the environment. The transparency requirements that institutions are subject and the sustainability reporting requirements laid down in other pieces of existing legislation in the Union will provide more granular data in a few years. However, to properly assess the ESG risks that

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51 ECOFIN Council "Action Plan to Tackle Non-Performing Loans in Europe", July 2017. Council conclusions on Action plan to tackle non-performing loans in Europe - Consilium (europa.eu)

52 Communication from the Commission to the European Parliament, the Council and the European Central Bank on "Tackling non-performing loans in the aftermath of the COVID-19 pandemic" COM/2020/822 final.

institutions may face, it is imperative that markets and supervisors obtain adequate data from all entities exposed to those risks, independently of their size. In order to ensure that competent authorities have at their disposal data that are granular, comprehensive and comparable for an effective supervision, information on exposures to ESG risks should be included in the supervisory reporting of institutions. The scope and granularity of that information should be consistent with the principle of proportionality, having regard to the size and complexity of the institutions.

(41) As the transition of the Union economy towards a sustainable economic model is gaining momentum, sustainability risks become more prominent and will potentially require further consideration. It is therefore necessary to bring forward by 2 years EBA's mandate to assess and report on whether a dedicated prudential treatment of exposures related to assets or activities substantially associated with environmental or social objectives would be justified.

(42) It is essential for supervisors to have the necessary empowerments to assess and measure in a comprehensive manner the risks to which a banking group is exposed at a consolidated level and to have the flexibility to adapt their supervisory approach to new sources of risks. It is important to avoid loopholes between prudential and accounting consolidation which may give rise to transactions aimed at moving assets out of the scope of prudential consolidation, even though risks remain in the banking group. The lack of coherence in the definition of "parent undertaking", "subsidiary" and "control" concepts, and the lack of clarity in the definition of "ancillary services undertaking", "financial holding company" and "financial institution" make it more difficult for supervisors to apply the applicable rules consistently in the Union and to detect and appropriately address risks at a consolidated level. Those definitions should therefore be amended and further clarified. In addition, it is deemed appropriate for EBA to investigate further whether these empowerments of the supervisors might be unintendedly constrained by any remaining discrepancies or loopholes in the regulatory provisions or in their interaction with the applicable accounting framework.

(43) The lack of clarity of certain aspects of the minimum haircut floors framework for securities financing transactions (SFTs), developed by the BCBS in 2017 as part of the final Basel III reforms, as well as reservations about the economic justification of applying it to certain types of SFTs have raised the question of whether the prudential objectives of this framework could be attained without creating undesirable consequences. The Commission should therefore reassess the implementation of the minimum haircut floors framework for SFTs in Union law by [OP please insert date = 24 months after entry into force of this Regulation]. In order to provide the Commission with sufficient evidence, EBA, in close cooperation with ESMA, should report to the Commission on the impact of that framework, and on the most appropriate approach for its implementation in Union law.

(44) The Commission should transpose into Union law the revised standards for the capital requirements for CVA risks, published by the BCBS in July 2020, as these standards overall improve the calculation of own funds requirement for CVA risk by addressing several previously observed issues, in particular that the existing CVA capital requirements framework fails to appropriately capture CVA risk.

(45) When implementing the initial Basel III reforms in Union law through the CRR, certain transactions were exempted from the calculation of capital requirements for CVA risk. These exemptions were agreed to prevent a potential excessive increase in the cost of some derivative transactions triggered by the introduction of the capital

requirement for CVA risk, particularly when banks could not mitigate the CVA risk of certain clients that were not able to exchange collateral. According to estimated impacts calculated by EBA, the capital requirements for CVA risk under the revised Basel standards would remain unduly high for the exempted transactions with these clients. To ensure that banks' clients continue hedging their financial risks via derivative transactions, the exemptions should be maintained when implementing the revised Basel standards.

(46) However, the actual CVA risk of the exempted transactions may be a source of significant risk for banks applying those exemptions; if those risks materialise, the banks concerned could suffer significant losses. As EBA highlighted in their report on CVA from February 2015, the CVA risks of the exempted transactions raise prudential concerns that are not being addressed under CRR. To help supervisors monitor the CVA risk arising from the exempted transactions, institutions should report the calculation of capital requirements for CVA risks of the exempted transactions that would be required if those transactions were not exempted. In addition, EBA should develop guidelines to help supervisors identify excessive CVA risk and to improve the harmonisation of supervisory actions in this area across the EU.

(47) Regulation (EU) No 575/2013 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 4, paragraph 1 is amended as follows:

(a) points (15) and (16) are replaced by the following:

'(15) 'parent undertaking' means an undertaking that controls, in the meaning of point (37), one or more undertakings;

(16) 'subsidiary' means an undertaking that is controlled, in the meaning of point (37), by another undertaking;';

(b) point (18) is replaced by the following:

'(18) 'ancillary services undertaking' means an undertaking the principal activity of which, whether provided to undertakings inside the group or to clients outside the group, the competent authority considers to be any of the following:

(a) a direct extension of banking;

(b) operational leasing, factoring, the management of unit trusts, the ownership or management of property, the provision of data processing services or any other activity that is ancillary to banking;

(c) any other activity considered similar by EBA to those mentioned in points (a) and (b);';

(c) point (20) is replaced by the following:

‘(20) ‘financial holding company’ means an undertaking fulfilling all of the following conditions:

(a) the undertaking is a financial institution;

(b) the undertaking is not a mixed financial holding company;

(c) at least one subsidiary of that undertaking is an institution;

(d) more than 50 % of any of the following indicators are associated, on a steady basis, with subsidiaries that are institutions or financial institutions, and with activities performed by the undertaking itself that are not related to the acquisition or owning of holdings in subsidiaries when those activities are of the same nature as the ones performed by institutions or financial institutions:

(i) the undertaking’s equity based on its consolidated situation;

(ii) the undertaking’s assets based on its consolidated situation;

(iii) the undertaking’s revenues based on its consolidated situation;

(iv) the undertaking’s personnel based on its consolidated situation;

(v) other indicator considered relevant by the competent authority;’;

(d) the following point (20a) is inserted:

‘(20a) ‘investment holding company’ means an investment holding company as defined in Article 4(1), point (23), of Regulation (EU) 2019/2033 of the European Parliament and of the Council[53];

(e) point (26) is replaced by the following:

‘(26) ‘financial institution’ means an undertaking that meets both of the following conditions:

(a) the undertaking is not an institution, a pure industrial holding company, an insurance holding company or a mixed-activity insurance holding company as defined in Article 212(1), points (f) and (g), of Directive 2009/138/EC;

(b) the undertaking fulfils any of the following conditions:

(i) the principal activity of the undertaking is to acquire or own holdings or to pursue one or more of the activities listed Annex I, points 2 to 12 and point 15, to Directive 2013/36/EU, or to pursue one or more of the services or activities listed in Annex I, Section 1 or B, to Directive 2014/65/EU of the European Parliament and of the Council[54] in relation to financial instruments listed in Section C of that Annex to that Directive;

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53 Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).

54 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

(ii) the undertaking is an investment firm, a mixed financial holding company, an investment holding company, a payment services provider within the meaning of Directive (EU) 2015/2366 of the European Parliament and of the Council[55], an asset management company or an ancillary services undertaking;';

(f) the following point (26a) is inserted:

'(26a) 'pure industrial holding company' means an undertaking that fulfils all of the following conditions:

(a) the principal activity of the undertaking is to acquire or own holdings;

(b) neither the undertaking nor any of the undertakings in which it owns participations are referred to in point (27), points (a), (d), (e), (f), (g), (h), (k) and (l);

(c) neither the undertaking nor any of the undertakings in which it own participations perform as a principal activity any of the activities listed in Annex I to Directive 2013/36/EU, any of the activities listed in Annex I, Sections A or B, to Directive 2014/65/EU in relation to financial instruments listed in Section C of that Annex to that Directive, or are investment firms, payment services providers within the meaning of Directive (EU) 2015/2366, asset management companies, or ancillary services undertakings;';

(g) in point (27), point (c) is deleted;

(h) point (28) is replaced by the following:

'(28) 'parent institution in a Member State' means an institution in a Member State which has an institution or a financial institution as a subsidiary, or which holds a participation in an institution, financial institution or ancillary services undertaking, and which is not itself a subsidiary of another institution authorised in the same Member State, or of a financial holding company or mixed financial holding company set up in the same Member State;';

(i) the following points (33a) and (33b) are inserted:

'(33a) 'stand-alone institution in the EU' means an institution that is not subject to prudential consolidation pursuant to Part One, Title II, Chapter 2 in the EU, and that has no EU parent undertaking subject to such prudential consolidation;

(33b) 'stand-alone subsidiary institution in a Member State' means an institution that meets all of the following criteria:

(a) the institution is the subsidiary of an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company;

[55] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

(b) the institution is located in another Member State than its parent institution, parent financial holding company or parent mixed financial holding company;

(c) the institution has no subsidiary itself and does not hold any participation in an institution or financial institution;';

(j) in point (37) the reference to 'Article 1 of Directive 83/349/EEC' is replaced by a reference to 'Article 22 of Directive 2013/34/EU';

(k) point (52) is replaced by the following:

'(52) 'operational risk' means the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, including legal risk, model risk and ICT risk, but not strategic and reputational risk;';

(l) the following points (52a) to (52i) are inserted:

'(52a) 'legal risk' means losses, including expenses, fines, penalties or punitive damages, caused by events that result in legal proceedings, including the following:

(a) supervisory actions and private settlements;

(b) failure to act where action is necessary to comply with a legal obligation;

(c) action taken to avoid compliance with a legal obligation;

(d) misconduct events, which are events that arise from wilful or negligent misconduct, including inappropriate supply of financial services;

(e) non-compliance with any requirement derived from national or international statutory or legislative provisions;

(f) non-compliance with any requirement derived from contractual arrangements, or with internal rules and codes of conduct established in accordance with national or international norms and practices;

(g) non-compliance with ethical rules.

Legal risk does not comprise refunds to third parties or employees and goodwill payments due to business opportunities, where no breach of any rules or ethical conduct has occurred and where the institution has fulfilled its obligations on a timely basis; and external legal costs where the event giving rise to those external costs is not an operational risk event.

(52b) 'model risk' means the loss an institution may incur as a consequence of decisions that could be principally based on the output of internal models, due to errors in the development, implementation or use of such models, including the following:

(a) the improper set-up of a selected internal model and its characteristics;

(b) the inadequate verification of a selected internal model's suitability for the financial instrument to be evaluated or for the product to be priced, or of the selected internal model's suitability for the applicable market conditions;

(c) errors in the implementation of a selected internal model;

(d) incorrect mark-to-market valuations and risk measurement as a result of a mistake when booking a trade into the trading system;

(e) the use of a selected internal model or of its outputs for a purpose for which that model was not intended or designed, including manipulation of the modelling parameters;

(f) the untimely and ineffective monitoring of model performance to assess whether the selected internal model remains fit for purpose;

(52c) ‘ICT risk’ means the risk of losses or potential losses related to the use of network information systems or communication technology, including breach of confidentiality, failure of systems, unavailability or lack of integrity of data and systems, and cyber risk;

(52d) ‘environmental, social or governance (ESG) risk’ means the risk of losses arising from any negative financial impact on the institution stemming from the current or prospective impacts of environmental, social or governance (ESG) factors on the institution’s counterparties or invested assets;

(52e) ‘environmental risk’ means the risk of losses arising from any negative financial impact on the institution stemming from the current or prospective impacts of environmental factors on the institution’s counterparties or invested assets, including factors related to the transition towards the following environmental objectives:

(a) climate change mitigation ;

(b) climate change adaptation;

(c) the sustainable use and protection of water and marine resources;

(d) the transition to a circular economy;

(e) pollution prevention and control;

(f) the protection and restoration of biodiversity and ecosystems;

Environmental risk includes both physical risk and transition risk.

(52f) ‘physical risk’, as part of the overall environmental risk, means the risk of losses arising from any negative financial impact on the institution stemming from the current or prospective impacts of the physical effects of environmental factors on the institution’s counterparties or invested assets;

(52g) ‘transition risk’, as part of the overall environmental risk, means the risk of losses arising from any negative financial impact on the institution stemming from the current or prospective impacts of the transition of business activities and sectors to an environmentally sustainable economy on the institution’s counterparties or invested assets;

(52h) ‘social risk’ means the risk of losses arising from any negative financial impact on the institution stemming from the current or prospective impacts of social factors on its counterparties or invested assets;

(52i) ‘governance risk’ means the risk of losses arising from any negative financial impact on the institution stemming from the current or prospective impacts of governance factors on the institution’s counterparties or invested assets;’;

(m) points (54), (55) and (56) are replaced by the following:

‘(54) ‘probability of default’ or ‘PD’ means the probability of default of an obligor over a one-year period, and, in the context of dilution risk, the probability of dilution over that one-year period;

(55) ‘loss given default’ or ‘LGD’ means the expected ratio of the loss on an exposure related to a single facility due to the default of an obligor or facility to the amount outstanding at default, and, in the context of dilution risk, the loss given dilution meaning the expected ratio of the loss on an exposure due to dilution, to the amount outstanding according to the pledged or purchased receivable;

(56) ‘conversion factor’ or ‘credit conversion factor’ or ‘CCF’ means the expected ratio of the currently undrawn amount of a commitment from a single facility that could be drawn from a single facility before default and that would therefore be outstanding at default to the currently undrawn amount of the commitment from that facility, the extent of the commitment being determined by the advised limit, unless the unadvised limit is higher;’;

(n) the following point (56a) is inserted:

‘(56a) ‘realised CCF’ means the ratio of the drawn amount of a commitment from a single facility, that was undrawn at a given reference date prior to default, and that is therefore outstanding at default, to the undrawn amount of the commitment from that facility at that reference date;’;

(o) points (58), (59) and 60 are replaced by the following:

‘(58) ‘funded credit protection’ or ‘FCP’ means a technique of credit risk mitigation where the reduction of the credit risk on the exposure of an institution is derived from the right of that institution, in the event of the default of the obligor or on the occurrence of other specified credit events relating to the obligor, to liquidate, or to obtain transfer or appropriation of, or to retain certain assets or amounts, or to reduce the amount of the exposure to, or to replace it with, the amount of the difference between the amount of the exposure and the amount of a claim on the institution;

(59) ‘unfunded credit protection’ or ‘UFCP’ means a technique of credit risk mitigation where the reduction of the credit risk on the exposure of an institution is derived from the obligation of a third party to pay an amount in the event of the default of the obligor or the occurrence of other specified credit events;

(60) ‘cash assimilated instrument’ means a certificate of deposit, a bond, including a covered bond, or any other non-subordinated instrument, which has been issued by the lending institution, for which the lending institution has already received full payment and which shall be unconditionally reimbursed by the lending institution at its nominal value;’;

(p) the following point (60a) is inserted:

‘(60a) ‘gold bullion’ means gold in the form of a commodity, including gold bars, ingots and coins, commonly accepted by the bullion market, where liquid markets for bullion exist, and the value of which is determined by the value of the gold content, defined by purity and mass, rather than by its interest to numismatists;’;

(q) the following point (74a) is inserted :

‘(74a) ‘property value’ means the value of an immovable property determined in accordance with Article 229(1);’;

(r) point (75) is replaced by the following:

‘(75) ‘residential property’ means any of the following:

(a) an immovable property which has the nature of a dwelling and satisfies all applicable laws and regulations enabling the property to be occupied for housing purposes;

(b) an immovable property which has the nature of a dwelling and is still under construction, provided that there is the expectation that the property will satisfy all applicable laws and regulations enabling the property to be occupied for housing purposes;

(c) the right to inhabit an apartment in housing cooperatives located in Sweden

(d) land accessory to a property referred to in points (a), (b) or (c);’;

(s) the following points (75a) to (75g) are inserted:

‘(75a) ‘commercial immovable property’ means any immovable property that is not residential property, including lands other than those referred to in points (75)(d) and (79);

(75b) ‘income producing real estate exposure’ (IPRE exposure) means an exposure secured by one or more residential or commercial immovable properties where the fulfilment of the credit obligations related to the exposure materially depends on the cash flows generated by those immovable properties securing that exposure, rather than on the capacity of the obligor to fulfil the credit obligations from other sources;

(75c) ‘non-income producing real estate exposure’ (non-IPRE exposure) means any exposure secured by one or more residential or commercial immovable properties that is not an IPRE exposure;

(75d) ‘non-ADC exposure’ means any exposure secured by one or more residential or commercial immovable properties that is not an ADC exposure;

(75e) ‘exposure secured by residential property’, or ‘exposure secured by a mortgage on residential property’, or ‘exposure secured by residential property collateral’, or ‘exposure secured by residential immovable property’, means an exposure secured by a mortgage on residential property or secured by any other mechanisms other than mortgages but which are economically equivalent to mortgages and recognised as collateral on residential property under the applicable national law setting out the conditions for the establishment of those mechanisms;

(75f) ‘exposure secured by commercial immovable property’, or ‘exposure secured by a mortgage on commercial immovable property’, or ‘exposure secured by commercial immovable property collateral’ means an exposure secured by a mortgage on commercial immovable property or secured by any other mechanisms other than mortgages but which are economically equivalent to mortgages and recognised as collateral on commercial immovable property under the applicable national law setting out the conditions for the establishment of those mechanisms;

(75g) 'exposure secured by immovable property', or 'exposure secured by a mortgage on immovable property', or 'exposure secured by immovable property collateral' means an exposure secured by a mortgage on residential or commercial immovable property or secured by any other mechanisms other than mortgages but which are economically equivalent to mortgages and recognised as collateral on immovable property under the applicable national law setting out the conditions for the establishment of those mechanisms;';

(t) points (78) and (79) are replaced by the following:

'(78) 'one-year default rate' means the ratio between the number of defaults occurred during a period that starts from one year prior to a date of observation T, and the number of obligors, or the number of facilities where the classification as defaulted is applied at facility level pursuant to Article 178, assigned to this grade or pool one year prior to that date of observation T;

(79) 'ADC exposures' or 'land acquisition, development and construction exposures' means exposures to corporates or special purpose entities financing any land acquisition for development and construction purposes, or financing development and construction of any residential or commercial immovable property;';

(u) point (114) is replaced by the following:

'(114) 'indirect holding' means any exposure to an intermediate entity that has an exposure to capital instruments issued by a financial sector entity or to liabilities issued by an institution where, in the event the capital instruments issued by the financial sector entity or the liabilities issued by the institution were permanently written off, the loss that the institution would incur as a result would not be materially different from the loss the institution would incur from a direct holding of those capital instruments issued by the financial sector entity or of those liabilities issued by the institution;'

(v) point (126) is replaced by the following:

'(126) 'synthetic holding' means an investment by an institution in a financial instrument the value of which is directly linked to the value of the capital instruments issued by a financial sector entity or to the value of the liabilities issued by an institution;';

(w) point (144) is replaced by the following:

'(144) 'trading desk' means a well-identified group of dealers set up by the institution to jointly manage a portfolio of trading book positions, or the non-trading book positions referred to in Article 104b, paragraphs 5 and 6, in accordance with a well-defined and consistent business strategy and operating under the same risk management structure;'

(x) in point (145), the following subparagraph is inserted:

'For the purposes of point (e), an institution may exclude derivative positions it entered with its non-financial clients and the derivatives positions it uses to hedge those positions, provided that the combined value of the excluded positions calculated in accordance with Article 273a(3) does not exceed 10%

of the institution's total on- and off-balance sheet assets.';(y) the following points (151) and (152) are added:

'(151) 'revolving exposure' means any exposure whereby the borrower's outstanding balance is permitted to fluctuate based on its decisions to borrow and repay, up to an agreed limit;

(152) 'transactor exposure' means any revolving exposure that has at least 12 months of repayment history and that is one of the following:

(a) an exposure for which, on a regular basis of at least every 12 months, the balance to be repaid at the next scheduled repayment date is determined as the drawn amount at a predefined reference date, with a scheduled repayment date not later than after 12 months, provided that the balance has been repaid in full at each scheduled repayment date for the previous 12 months;

(b) an overdraft facility where there have been no drawdowns over the previous 12 months';

(2) Article 5 is amended as follows:

(a) point (3) is replaced by the following:

'(3) 'expected loss' or 'EL' means the ratio, related to a single facility, of the amount expected to be lost on an exposure from any of the following:

(i) a potential default of an obligor over a one-year period to the amount outstanding at default;

(ii) a potential dilution event over a one-year period to the amount outstanding at the date of occurrence of the dilution event;';

(b) the following points (4) to (10) are added:

'(4) 'credit obligation' means any obligation arising from a credit contract, including principal, accrued interest and fees, owed by an obligor to an institution or, where the institution serves as a guarantor, owed by an obligor to a third party;

(5) 'credit exposure' means any on-balance sheet item, including any amount of principal, accrued interest and fees owed by the obligor to the institution, and any off-balance sheet item that results, or may result, in a credit obligation;

(6) 'facility' means a credit exposure arising from contract or a set of contracts between an obligor and an institution;

(7) 'margin of conservatism' means an additive or multiplicative add-on incorporated in risk estimates, sufficiently prudent to account for the expected range of estimation errors stemming from identified deficiencies in data, methods, models, and changes to underwriting standards, risk appetite, collection and recovery policies and any other source of additional uncertainty, as well as from general estimation error;

(8) 'small and medium-sized enterprise' or 'SME' means a company, enterprise or undertaking which, according to the last consolidated accounts, has an annual turnover not exceeding EUR 50 000 000;'

(9) 'commitment' means any contractual arrangement that an institution offers to a client and is accepted by that client, to extend credit, purchase assets or

issue credit substitutes. Any arrangement that can be unconditionally cancelled by the institution at any time without prior notice to the obligor or any arrangement that can be cancelled by the institution where the obligor fails to meet conditions set out in the facility documentation, including conditions that must be met by the obligor prior to any initial or subsequent drawdown under the arrangement, is a commitment;

Contractual arrangements that meet all of the following conditions shall not be commitments:

(a) contractual arrangements where the institution receives no fees or commissions to establish or maintain those contractual arrangements;

(b) contractual arrangements where the client is required to apply to the institution for the initial and each subsequent drawdown under those contractual arrangements;

(c) contractual arrangements where the institution has full authority, regardless of the fulfilment by the client of the conditions set out in the contractual arrangement documentation, over the execution of each drawdown;

(d) contractual arrangements where the institution is required to assess the creditworthiness of the client immediately prior to deciding on the execution of each drawdown;

(e) contractual arrangements that are offered to a corporate entity, including an SME, that is closely monitored on an ongoing basis.

(10) 'unconditionally cancellable commitment' means any commitment the terms of which permit the institution to cancel that commitment to the full extent allowable under consumer protection and related legislation at any time without prior notice to the obligor or that effectively provide for automatic cancellation due to deterioration in a borrower's creditworthiness.';

(3) in Article 6, paragraph 3 is replaced by the following:

'3. No institution which is either a parent undertaking or a subsidiary, and no institution included in the consolidation pursuant to Article 18, shall be required to comply on an individual basis with the obligations laid down in Article 92, paragraphs 5 and 6, and Part Eight.';

(4) in Article 10a, the single paragraph is amended as follows:

'For the purposes of the application of this Chapter, investment firms and investment holding companies shall be considered to be parent financial holding companies in a Member State or Union parent financial holding companies where such investment firms or investment holding companies are parent undertakings of an institution or of an investment firm subject to this Regulation that is referred to in Article 1(2) or (5) of Regulation (EU) 2019/2033.';

(5) in Article 11(1), the first sentence is replaced by the following:

'Parent institutions in a Member State shall comply, to the extent and in the manner set out in Article 18, with the obligations laid down in Parts Two, Three, Four, Seven and Seven A on the basis of their consolidated situation, with the exception of Article 92(3), point (a), and Article 430(1), point (d).';

(6) Article 18 is amended as follows:

(a) paragraph 2 is deleted;

(b) in paragraph 7, first sub-paragraph, the first sentence is replaced by the following:

‘Where an institution has a subsidiary which is an undertaking other than an institution or a financial institution or holds a participation in such an undertaking, it shall apply to that subsidiary or participation the equity method.’;

(c) a new paragraph 10 is inserted:

‘10. EBA shall report to the Commission by [OP please insert date = 1 year after the entry into force of this Regulation] on the completeness and appropriateness of the set of definitions and provisions of this Regulation concerning the supervision of all types of risks to which institutions are exposed at a consolidated level. EBA shall assess in particular any possible remaining discrepancies in those definitions and provisions alongside their interaction with the applicable accounting framework, and any remaining aspect that might pose unintended constraints to a consolidated supervision that is comprehensive and adaptable to new sources or types of risks or structures that might lead to regulatory arbitrage. EBA shall periodically update its report on a bi-annual basis.

In the light of EBA’S findings, the Commission may, if appropriate, adopt delegated acts in accordance with Article 462 to adjust the relevant definitions or the scope of prudential consolidation.’;

(7) Article 20 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (a) is replaced by the following:

‘(a) in the case of applications for the permissions referred to in Article 143(1), Article 151, paragraphs 4 and 9, Article 283 and Article 363 submitted by an EU parent institution and its subsidiaries, or jointly by the subsidiaries of an EU parent financial holding company or EU parent mixed financial holding company, to decide whether or not to grant the permission sought and to determine the terms and conditions, if any, to which such permission should be subject;’;

(ii) the third subparagraph is deleted;

(b) paragraph 6 is replaced by the following:

‘6. Where an EU parent institution and its subsidiaries, the subsidiaries of an EU parent financial holding company or an EU parent mixed financial holding company use the IRB Approach referred to in Article 143 on a unified basis, the competent authorities shall allow the parent and its subsidiaries, considered together, to meet the qualifying criteria set out in Part Three, Title II, Chapter 3, Section 6 in a way that is consistent with the structure of the group and its risk management systems, processes and methodologies.’;

(8) in Article 27(1), point (a), point (v) is deleted;

(9) in Article 34, the following paragraphs are added:

‘By way of derogation from the first paragraph of this Article, in extraordinary circumstances the existence of which will be determined by an opinion provided by EBA, institutions may reduce the total additional value adjustments in the calculation of the total amount to be deducted from Common Equity Tier 1 capital.

For the purposes of providing the opinion referred to in the second subparagraph, EBA shall monitor the market conditions to assess whether extraordinary circumstances have occurred and accordingly, shall notify the Commission immediately.

EBA shall develop draft regulatory technical standards to specify the indicators and conditions that EBA will use to determine the extraordinary circumstances referred to in the second paragraph and to specify the reduction of the total aggregated additional value adjustments referred to in that paragraph.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert date = 2 years after the entry into force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the third paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.’;

(10) Article 36 is amended as follows:

(a) in paragraph 1, point (d) is replaced by the following:

‘(d) for institutions calculating risk-weighted exposure amounts using the Internal Ratings Based Approach (the IRB Approach), the IRB shortfall where applicable, calculated in accordance with Article 159;’;

(b) in paragraph 1, in point (k), point (v) is deleted;

(11) in Article 46(1), in point (a), point (ii) is replaced by the following:

‘(ii) the deductions referred to in Article 36(1), points (a) to (g), points (k)(ii), (iii) and (iv) and points (l), (m) and (n), excluding the amount to be deducted for deferred tax assets that rely on future profitability and arise from temporary differences;’;

(12) in Article 48, paragraph 1 is amended as follows:

(a) in point (a), point (ii) is replaced by the following:

‘(ii) Article 36(1), points (a) to (h), points (k)(ii), (iii) and (iv) and points (l), (m) and (n), excluding deferred tax assets that rely on future profitability and arise from temporary differences.’;

(b) in point (b), point (ii) is replaced by the following:

‘(ii) Article 36(1), points (a) to (h), points (k)(ii), (iii) and (iv) and points (l), (m) and (n), excluding deferred tax assets that rely on future profitability and arise from temporary differences.’;

(13) in Article 49, paragraph 4 is replaced by the following:

‘4. The holdings in respect of which deduction is not made in accordance with paragraph 1 shall qualify as exposures and shall be risk weighted in accordance with Part Three, Title II, Chapter 2.

The holdings in respect of which deduction is not made in accordance with paragraphs 2 or 3 shall qualify as exposures and shall be risk weighted at 100 %.’;

(14) in Article 60(1), in point (a), point (ii) is replaced by the following:

'(ii) Article 36(1), points (a) to (g), points (k)(ii), (iii) and (iv) and points (l), (m) and (n), excluding deferred tax assets that rely on future profitability and arise from temporary differences;';

(15) in Article 62, first subparagraph, point (d) is replaced by the following:

'(d) for institutions calculating risk-weighted exposure amounts under Chapter 3 of Title II of Part Three, the IRB excess where applicable, gross of tax effects, calculated in accordance with Article 159 up to 0,6 % of risk-weighted exposure amounts calculated under Chapter 3 of Title II of Part Three.';

(16) in Article 70(1), in point (a), point (ii) is replaced by the following:

'(ii) Article 36(1), points (a) to (g), points (k)(ii), (iii) and (iv) and points (l), (m) and (n), excluding the amount to be deducted for deferred tax assets that rely on future profitability and arise from temporary differences;';

(17) in Article 72b(3), first subparagraph, the introductory phrase is replaced by the following:

'In addition to the liabilities referred to in paragraph 2 of this Article, the resolution authority may permit liabilities to qualify as eligible liabilities instruments up to an aggregate amount that does not exceed 3,5 % of the total risk exposure amount calculated in accordance with Article 92(3), provided that:';

(18) in Article 72i(1), in point (a), point (ii) is replaced by the following:

'(ii) Article 36(1), points (a) to (g), points (k)(ii), (iii) and (k)(iv) and points (l), (m) and (n), excluding the amount to be deducted for deferred tax assets that rely on future profitability and arise from temporary differences;';

(19) in Article 84(1), point (a) is replaced by the following:

'(a) the Common Equity Tier 1 capital of the subsidiary minus the lower of the following:

(i) the amount of Common Equity Tier 1 capital of that subsidiary required to meet the following:

– where the subsidiary is an institution, the sum of the requirement laid down in Article 92(1), point (a), the requirements referred to in Articles 458 and 459 , the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in Article 128, point (6), of that Directive, or any local supervisory regulations in third countries insofar as those requirements are to be met by Common Equity Tier 1 capital, as applicable;

– where the subsidiary is an investment firm, the sum of the requirement laid down in Article 11 of Regulation (EU) 2019/2033, the specific own funds requirements referred to in Article 39(2), point (a), of Directive (EU) 2019/2034, or any local supervisory regulations in third countries, insofar as those requirements are to be met by Common Equity Tier 1 capital, as applicable;

(ii) the amount of consolidated Common Equity Tier 1 capital that relates to that subsidiary that is required on a consolidated basis to meet the sum of the requirement laid down in Article 92(1), point (a), the requirements referred to in Articles 458 and 459, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU and the combined buffer requirement defined in Article 128, point (6), of that Directive;';

(20) in Article 85(1), point (a) is replaced by the following:

'(a) the Tier 1 capital of the subsidiary minus the lower of the following:

(i) the amount of Tier 1 capital of the subsidiary required to meet the following:

– where the subsidiary is an institution, the sum of the requirement laid down in Article 92(1), point (b), the requirements referred to in Articles 458 and 459, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in Article 128, point (6), of that Directive, or any local supervisory regulations in third countries insofar as those requirements are to be met by Tier 1 Capital, as applicable;

– where the subsidiary is an investment firm, the sum of the requirement laid down in Article 11 of Regulation (EU) 2019/2033, the specific own funds requirements referred to in Article 39(2), point (a), of Directive (EU) 2019/2034, or any local supervisory regulations in third countries insofar as those requirements are to be met by Tier 1 capital, as applicable;

(ii) the amount of consolidated Tier 1 capital that relates to the subsidiary that is required on a consolidated basis to meet the sum of the requirement laid down in Article 92(1), point (b), the requirements referred to in Articles 458 and 459, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU and the combined buffer requirement defined in Article 128, point (6), of that Directive;';

(21) the following Article 88b is inserted:

'Article 88b

Undertakings in third countries

For the purposes of this Title II, the terms 'investment firm' and 'institution' shall be understood to include also undertakings established in third countries, which, were they established in the Union, would fall under the definitions of those terms in Article 4(1), points (2) and (3).';

(22) in Article 89, paragraph 1 is replaced by the following:

'1. A qualifying holding, the amount of which exceeds 15 % of the eligible capital of the institution, in an undertaking which is not a financial sector entity, shall be subject to the provisions laid down in paragraph 3.';

(23) Article 92 is amended as follows:

(a) paragraph 3 and 4 are replaced by the following:

'3. The total risk exposure amount shall be calculated as follows:

(a) a stand-alone institution in the EU and, for the purposes of complying with the obligations of this Regulation on the basis of its consolidated situation in accordance with Part One, Title II, Chapter 2, an EU parent institution, an EU parent financial holding company and an EU parent mixed financial holding company shall calculate the total risk exposure amount as follows:

$$\text{TREA} = \max\{\text{U-TREA}; x \cdot \text{S-TREA}\}$$

where:

TREA = the total risk exposure amount of the entity;

U-TREA = the un-floored total risk exposure amount of the entity calculated in accordance with paragraph 4;

S-TREA = the standardised total risk exposure amount of the entity calculated in accordance with paragraph 5;

x = 72,5 %;

(b) for the purposes set out in points (i) and (ii), the total risk exposure amount shall be calculated in accordance with paragraph 6:

(i) in case of a stand-alone subsidiary institution in a Member State, for the purposes of complying with obligations of this Regulation on its individual basis;

(ii) in case of a parent institution in a Member State, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State, for the purposes of complying with obligations of this Regulation on the basis of its consolidated situation;

(c) for the purposes of complying with the obligations of this Regulation on an individual basis, the total risk exposure amount of an institution which is neither a stand-alone institution in the EU nor a stand-alone subsidiary institution in a Member State shall be the un-floored total risk exposure amount calculated in accordance with paragraph 4.

4. The un-floored total risk exposure amount shall be calculated as the sum of points (a) to (f) of this paragraph after having taken into account paragraph 7:

(a) the risk-weighted exposure amounts for credit risk, including counterparty risk, and dilution risk, calculated in accordance with Title II and Article 379, in respect of all the business activities of an institution, excluding risk-weighted exposure amounts for counterparty risk from the trading book business of the institution;

(b) the own funds requirements for the trading-book business of an institution for the following:

(i) market risk, calculated in accordance with Title IV of this Part;

(ii) large exposures exceeding the limits specified in Articles 395 to 401, to the extent that an institution is permitted to exceed those limits, as determined in accordance with Part Four;

(c) the own funds requirements for market risk, calculated in accordance with Title IV of this Part for all business activities that are subject to foreign exchange risk or commodity risk;

(ca) the own funds requirements for settlement risk, calculated in accordance with Title V of this Part, with the exception of Article 379;

(d) the own funds requirements for credit valuation adjustment risk, calculated in accordance with Title VI of this Part;

(e) the own funds requirements for operational risk, calculated in accordance with Title III of this Part;

(f) the risk-weighted exposure amounts for counterparty risk arising from the trading book business of the institution for the following types of transactions and agreements, calculated in accordance with Title II of this Part:

(i) contracts listed in Annex II and credit derivatives;

(ii) repurchase transactions, securities or commodities lending or borrowing transactions based on securities or commodities;

(iii) margin lending transactions based on securities or commodities;

(iv) long settlement transactions.';

(b) the following paragraphs 5, 6 and 7 are added:

'5. The standardised total risk exposure amount shall be calculated as the sum of paragraph 4, points (a) to (f), after having taken into account paragraph 7 and the following requirements:

(a) the risk-weighted exposure amounts for credit risk and dilution risk referred to in paragraph 4, point (a), and for counterparty risk arising from the trading book business as referred to in point (f) of that paragraph shall be calculated without using any of the following approaches:

(i) the internal models approach for master netting agreements set out in Article 221;

(ii) the Internal Ratings Based Approach provided for in Chapter 3;

(iii) the Securitisation Internal Ratings-Based Approach (SEC-IRBA) set out in Articles 258 to 260 and the Internal Assessment Approach (IAA) set out in Article 265;

(iv) the approach set out in this Part, Title II, Chapter 6, Section 6;

(b) the own funds requirements for market risk for the trading book business referred to in paragraph 3, point (b)(i), and for all its business activities that are subject to foreign exchange risk or commodity risk referred to in point (c) of that paragraph shall be calculated without using the alternative internal model approach set out in Part Three, Title IV, Chapter 1b.

6. The total risk exposure amount of an entity 'i' for the purposes set out in paragraph 3, point (b), shall be calculated as follows:

$$\mathrm{TREA_i} = \text{U-TREA}_\mathrm{i} + \mathrm{DI^{conso}} * \mathrm{Contrib_i^{conso}}$$

where:

i = the index that denotes the entity;

$TREA_i$ = the total risk exposure amount of entity i;

$U\text{-}TREA_i$ = the un-floored total risk exposure amount of entity i calculated in accordance with paragraph 4;

DI^{conso} = any positive difference between the total risk exposure amount and the un-floored total risk exposure amount for the consolidated situation of the EU parent institution, EU parent financial holding company or EU parent mixed financial holding company of the group that entity i is part of, calculated as follows:

$$\mathrm{DI}^{\mathrm{conso}} = \mathrm{TREA} - \mathrm{U\text{-}TREA}$$

where:

U-TREA = the un-floored total risk exposure amount calculated in accordance with paragraph 4 for that EU parent institution, EU parent financial holding company or EU parent mixed financial holding company on the basis of its consolidated situation;

TREA = the total risk exposure amount calculated in accordance with paragraph 3, point (a), for that EU parent institution, EU parent financial holding company or EU parent mixed financial holding company on the basis of its consolidated situation.

$Contrib^{conso}{}_i$ = the contribution of entity i, calculated as follows:

$$\mathrm{Contrib}_{\mathrm{i}}^{\mathrm{conso}} = \begin{cases} \dfrac{(\mathrm{F\text{-}TREA}_i - \mathrm{U\text{-}TREA}_i)}{\sum_j(\mathrm{F\text{-}TREA}_j - \mathrm{U\text{-}TREA}_j)}, & if \sum_j (\mathrm{F\text{-}TREA}_j - \mathrm{U\text{-}TREA}_{\mathrm{j}}) > 0 \\ 0, & otherwise \end{cases}$$

where:

j = the index that denotes all entities that are part of the same group as entity i for the consolidated situation of the EU parent institution, EU parent financial holding company or EU parent mixed financial holding company;

$U\text{-}TREA_j$ = the un-floored total risk exposure amount calculated by entity j in accordance with paragraph 4 on the basis of its consolidated situation or, in case entity j is a stand-alone subsidiary institution in a Member State, on its individual basis;

$F\text{-}TREA_j$ = the floored total risk exposure amount of entity j calculated on the basis of its consolidated situation as follows:

$$\mathrm{F\text{-}TREA_j} = \max\left\{\mathrm{U\text{-}TREA_j}\,; \mathrm{x} \cdot \mathrm{S\text{-}TREA_j}\right\}$$

where:

$F\text{-}TREA_j$ = the floored total risk exposure amount calculated by entity j on the basis of its consolidated situation or, in case entity j is a stand-alone subsidiary institution in a Member State, for its individual basis;

$S\text{-}TREA_j$ = the standardised total risk exposure amount calculated in accordance with paragraph 5 by entity j on the basis of its consolidated situation or, in case entity j is a stand-alone subsidiary institution in a Member State, for its individual basis;

x = 72,5 %.

7. The following provisions shall apply to the calculations of the total un-floored risk exposure amount referred to in paragraph 4 and of the standardised risk exposure amount referred to in paragraph 5:

(a) the own funds requirements referred to in paragraph 4, points (c), (ca), (d) and (e), shall include those arising from all the business activities of an institution;

(b) institutions shall multiply the own funds requirements set out in paragraph 4, points (b) to (e), by 12,5.';

(24) in Article 92a(1), point (a) is replaced by the following:

'(a) a risk-based ratio of 18 %, representing the own funds and eligible liabilities of the institution expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3);';

(25) in Article 102, paragraph 4 is replaced by the following:

'4. For the purposes of calculating the own fund requirements for market risk in accordance with the approach referred to in Article 325(1), point (b), trading book positions shall be assigned to trading desks established in accordance with Article 104b.';

(26) Article 104 is replaced by the following:

'Article 104

Inclusion in the trading book

1. An institution shall have in place clearly defined policies and procedures for determining which positions to include in the trading book to calculate its own fund requirements, in accordance with Article 102 and this Article, taking into account the institution's risk management capabilities and practices. The institution shall fully document its compliance with those policies and procedures, shall subject them to an internal audit on at least a yearly basis and shall make the results of that audit available to the competent authorities.

2. Institutions shall assign positions in the following instruments to the trading book:

(a) instruments that meet the criteria, set out in Article 325, paragraphs 6, 7 and 8, for the inclusion in the alternative correlation trading portfolio ('ACTP');

(b) instruments that would give rise to a net short credit or equity position in the non-trading book, with the exception of the own liabilities of the institution, unless such positions meet the criteria referred to in paragraph 2, point (e);

(c) instruments resulting from securities underwriting commitments, where those underwriting commitments relate only to securities that are expected to be actually purchased by the institution on the settlement date;

(d) financial assets or liabilities classified unambiguously as having a trading purpose under the accounting framework applicable to the institution;

(e) instruments resulting from market-making activities;

(f) collective investment undertakings held with trading intent, provided that those collective investment undertakings meet at least one of the conditions specified in paragraph 7;

(g) listed equities;

(h) trading-related securities financing transactions;

(i) options, or other derivatives, embedded in the own liabilities of the institution or from other instruments in the non-trading book that relate to credit or equity risk.

For the purposes of point (b), an institution shall have a net short equity position where a decrease in the equity's price results in a profit for the institution. An institution shall have a net short credit position where the credit spread increase or deterioration in the creditworthiness of the issuer or group of issuers results in a profit for the institution. Institutions shall continuously monitor where instruments give rise to a net short credit or equity position in the non-trading book.

For the purposes of point (i), an institution shall split the embedded option from its own liability or from the other instrument in the non-trading book that relate to credit or equity risk and shall assign, the own liability or the other instrument to the trading or to the non-trading book, as appropriate, in accordance with this Article.

3. Institutions shall not assign positions in the following instruments to the trading book:

(a) instruments designated for securitisation warehousing;

(b) real estate holdings-related instruments;

(c) unlisted equities;

(d) retail and SME credit-related instruments;

(e) other collective investment undertakings than the ones specified in paragraph 2, point (f);

(f) derivative contracts and collective investment undertakings with one or more of the underlying instruments referred to in points (a) to (d);

(g) instruments held for hedging a particular risk of one or more positions in an instrument referred to in points (a) to (f);

(h) own liabilities of the institution, unless such instruments meet the criteria referred to in paragraph 2, point (e).

4. By way of derogation from paragraph 2, an institution may assign to the non-trading book a position in an instrument referred to in points (d) to (i) of that paragraph, subject to the approval from its competent authority. The competent authority shall give its approval where the institution has proven to the authority's satisfaction that the position is not held with trading intent or does not hedge positions held with trading intent.

5. Where an institution has assigned to the trading book a position in an instrument other than the instruments referred to in paragraph 2, points (a), (b) or (c), the institution's competent authority may ask the institution to provide evidence to justify such assignment. Where the institution fails to provide suitable evidence, its competent authority may require the institution to reallocate that position to the non-trading book.

6. Where an institution has assigned to the non-trading book a position in an instrument other than the instruments referred to in paragraph 3, the institution's competent authority may ask the institution to provide evidence to justify such

assignment. Where the institution fails to provide suitable evidence, its competent authority may require the institution to reallocate that position to the trading book.

7. An institution shall assign to the trading book a position in a collective investment undertaking that is held with trading intent and where the institution meets one of the following conditions:

(a) the institution is able to obtain sufficient information about the individual underlying exposures of the CIU;

(b) the institution is not able to obtain sufficient information about the individual underlying exposures of the CIU, but the institution has knowledge of the content of the mandate of the CIU and is able to obtain daily price quotes for the CIU.

8. EBA shall develop draft regulatory technical standards to further specify the process that institutions shall use to calculate and monitor net short credit or equity positions in the non-trading book referred to in the paragraph 2, point (b).

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert date = 24 months after the entry into force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.';

(27) Article 104a is amended as follows:

(a) in paragraph 1, the second subparagraph is replaced by the following:

'EBA shall monitor the range of supervisory practices and shall issue by 28 June 2024 guidelines on what exceptional circumstances entail for the purposes of the first subparagraph and of paragraph 5. Those guidelines shall be adopted in accordance with Article 16 of Regulation (EU) No 1093/2010. Until EBA issues those guidelines, competent authorities shall notify EBA of, and shall provide a rationale for, their decisions on whether or not to permit an institution to reclassify a position as referred to in paragraph 2 of this Article.';

(b) paragraph 5 is replaced by the following:

'5. The reclassification of a position in accordance with this Article shall be irrevocable, except in the exceptional circumstances referred to in paragraph 1.';

(c) the following paragraph 6 is added:

'6. By way of derogation from paragraph 1, an institution may reclassify a non-trading book position as a trading book position in accordance with Article 104(2), point (d), without seeking permission from its competent authority. In such case, the requirements laid down in paragraphs 3 and 4 shall continue to apply to the institution. The institution shall immediately notify its competent authority where such reclassification has occurred.';

(28) Article 104b is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. For the purposes of calculating the own funds requirements for market risk in accordance with the approach referred to in Article 325(1), point (b), institutions shall establish trading desks and shall assign each of their trading book positions and their non-trading book positions referred to in paragraphs 5 and 6 to one of those trading desks. Trading book positions shall be attributed to the same trading desk only where those positions are in compliance with the agreed business strategy for that trading desk and are consistently managed and monitored in accordance with paragraph 2 of this Article.';

(b) the following paragraphs 5 and 6 are added:

'5. To calculate their own funds requirements for market risk, institutions shall assign each of their non-trading book positions that are subject to foreign exchange risk or commodity risk to trading desks established in accordance with paragraph 1 that manage risks that are similar to those positions.

6. By way of derogation from paragraph 5, institutions may, when calculating their own funds requirements for market risk, establish one or more trading desks to which they assign exclusively non-trading book positions subject to foreign exchange risk or commodity risk. Those trading desks shall not be subject to the requirements set out in paragraphs 1, 2 and 3.';

(29) the following Article 104c is inserted:

'*Article 104c*

Treatment of foreign exchange risk hedges of capital ratios

1. An institution which has deliberately taken a risk position in order to hedge, at least partially, against adverse movements in foreign exchange rates on any of its capital ratios as referred to in Article 92(1), points (a), (b) and (c), may, subject to permission of the competent authorities, exclude that risk position from the own funds requirements for foreign exchange risk set out in Article 325(1), provided that all of the following conditions are met:

(a) the maximum amount of the risk position that is excluded from the own funds requirements for market risk is limited to the amount of the risk position that neutralises the sensitivity of any of the capital ratios to the adverse movements in foreign exchange rates;

(b) the risk position is excluded from the own funds requirements for market risk for at least 6 months;

(c) the institution has established an appropriate risk management framework for hedging the adverse movements in foreign exchange rates on any of its capital ratios, including a clear hedging strategy and governance structure;

(d) the institution has provided to the competent authorities a justification for excluding a risk position from the own funds requirements for market risk, the details of that risk position and the amount to be excluded from the own funds requirements for market risk.

2. Any exclusion of risk positions from the own funds requirements for market risk in accordance with paragraph 1 shall be applied consistently.

3. The competent authorities shall approve any changes by the institution to the risk management framework referred to in paragraph 1, point (c), and to the details of the risk positions referred to in paragraph 1, point (d).

4. EBA shall develop draft regulatory technical standards to specify:

(a) the risk positions that an institution can deliberately take in order to hedge, at least partially, against the adverse movements of foreign exchange rates on any of an institution's capital ratios referred to paragraph 1, first subparagraph;

(b) how to determine the maximum amount referred to in paragraph 1, point (a), and the manner in which an institution shall exclude this amount for each of the approaches set out in Article 325(1);

(c) the criteria that shall be met by an institution's risk management framework referred to in paragraph 1, point(c), in order to be considered appropriate for the purpose of this Article.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 2 years after the entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.';

(30) Article 106 is amended as follows:

(a) in paragraph 3, the last subparagraph is replaced by the following:

'Both an internal hedge recognised in accordance with the first subparagraph and the credit derivative entered into with the third party shall be included in the trading book to calculate the own funds requirements for market risk. To calculate the own funds requirements for market risk using the approach set out in Article 325(1), point (b), both positions shall be assigned to the same trading desk established in accordance to Article 104b(1) that manages similar risks.'

(b) in paragraph 4, the last subparagraph is replaced by the following:

'Both an internal hedge recognised in accordance with the first subparagraph and the equity derivative entered into with the eligible third party protection provider shall be included in the trading book for the purposes of calculating the own funds requirements for market risk. For the purposes of calculating the own funds requirements for market risks using the approach set out in Article 325(1), point (b) both positions shall be assigned to the same trading desk established in accordance to Article 104b(1) that manages similar risks.'

(c) paragraph 5 is replaced by the following:

'5. Where an institution hedges non-trading book interest rate risk exposures using an interest rate risk position booked in its trading book, that interest rate risk position shall be considered to be an internal hedge to assess the interest rate risk arising from non-trading positions in accordance with Articles 84 and 98 of Directive 2013/36/EU where the following conditions are met:

(a) to calculate the own funds requirements for market risk using the approaches referred to in Article 325(1), points (a), (b) and (c), the interest rate risk position has been assigned to a separate portfolio from the other trading book positions, the business strategy of which is solely dedicated to manage and mitigate the market risk of internal hedges of interest rate risk exposure; for that purpose;

(b) for the purposes of calculating the own funds requirements for market risk using the approaches referred to in Article 325(1), point (b), the position has been assigned to a trading desk established in accordance with Article 104b the business strategy of which is solely dedicated to manage and mitigate the market risk of internal hedges of interest rate risk exposure;

(c) the institution has fully documented how the position mitigates the interest rate risk arising from non-trading book positions for the purposes of the requirements laid down in Articles 84 and 98 of Directive 2013/36/EU.';

(d) the following paragraphs 5a and 5b are inserted:

'5a. For the purposes of paragraph 5, point (a), the institution may assign to that portfolio other interest rate risk positions entered into with third parties, or with its own trading book, as long as the institution perfectly offsets the market risk of those interest rate risk positions entered into with its own trading book by entering into opposite interest rate risk positions with third parties.

5b. The following requirements apply to the trading desk referred to in paragraph 5, point (b):

(a) that trading desk may include other interest rate risk positions entered into with third parties or with other trading desks of the institution, as long as those positions meet the requirements for inclusion in the trading book referred to in Article 104 and those other trading desks perfectly offset the market risk of those other interest rate risk positions by entering into opposite interest rate risk positions with third parties;

(b) no trading book positions other than those referred to in point (a) are assigned to that trading desk;

(c) by way of derogation from Article 104b, that trading desk shall not be subject to the requirements set out in paragraphs 1, 2 and 3 of that Article.

(e) paragraphs 6 and 7 are replaced by the following:

'6. The own funds requirements for the market risk of all the positions assigned to the separate portfolio referred to in paragraph 5, point (a), or to the trading desk referred to in point (b) of that paragraph, shall be calculated on a stand-alone basis, in addition to the own funds requirements for the other trading book positions.

7. Where an institution hedges a CVA risk exposure using a derivative instrument entered into with its trading book, the position in that derivative instrument shall be recognised as an internal hedge for the CVA risk exposure for the purpose of calculating the own funds requirements for CVA risks in accordance with the approaches set out in Articles 383 or 384, where the following conditions are met:

(a) the derivative position is recognised as an eligible hedge in accordance with Article 386;

(b) where the derivative position is subject to any of the requirements set out in Article 325c(2), points (b) or (c), or in Article 325e(1), point (c), the institution perfectly offsets the market risk of that derivative position by entering into opposite positions with third parties;

The opposite trading book position of the internal hedge recognised in accordance with the first subparagraph shall be included in the institution's trading book to calculate the own funds requirements for market risk.'

(31) in Article 107, paragraphs 1, 2 and 3 are replaced by the following:

'1. Institutions shall apply either the Standardised Approach provided for in Chapter 2 or, where permitted by the competent authorities in accordance with Article 143, the Internal Ratings Based Approach provided for in Chapter 3 to calculate their risk-weighted exposure amounts for the purposes of Article 92(4), points (a) and (f).

2. For trade exposures and for default fund contributions to a central counterparty, institutions shall apply the treatment set out in Chapter 6, Section 9 to calculate their risk-weighted exposure amounts for the purposes of Article 92(4), points (a) and (f). For all other types of exposures to a central counterparty, institutions shall treat those exposures as follows:

(a) as exposures to an institution for other types of exposures to a qualifying CCP;

(b) as exposures to a corporate for other types of exposures to a non- qualifying CCP.

3. For the purposes of this Regulation, exposures to third country investment firms and exposures to third country credit institutions and exposures to third country clearing houses and exchanges, as well as exposures to third country financial institutions authorised and supervised by third country authorities and subject to prudential requirements comparable to those applied to institutions in terms of robustness, shall be treated as exposures to an institution only if the third country applies prudential and supervisory requirements to that entity that are at least equivalent to those applied in the Union."';

(32) Article 108 is replaced by the following:

'Article 108

Use of credit risk mitigation techniques under the Standardised Approach and the IRB Approach for credit risk and dilution risk

1. For an exposure to which an institution applies the Standardised Approach under Chapter 2 or applies the IRB Approach under Chapter 3 but without using its own estimates of loss given default (LGD) under Article 143, the institution may take into account the effect of FCP in accordance with Chapter 4 in the calculation of risk-weighted exposure amounts for the purposes of Article 92(4) points (a) and (f) or, where relevant, expected loss (EL) amounts for the purposes of the calculation referred to in Article 36(1) point (d) and Article 62 point (c).

2. For an exposure to which an institution applies the IRB Approach by using its own estimates of LGD under Article 143, the institution may take into account the effect of FCP in risk-weighted exposure amounts and expected loss amounts in accordance with Chapter 3.

2a. Where an institution applies the IRB Approach by using its own estimates of LGD under Article 143 for both the original exposure and for comparable direct exposures to the protection provider, the institution may take into account the effect of UFCP in risk-weighted exposure amounts and expected loss amounts in accordance with Chapter 3. In all other cases, the institution may take into account the effect of UFCP in risk-weighted exposure amounts and expected loss amounts in accordance with Chapter 4.

3. Subject to the conditions set out in paragraph 4, retail loans may be regarded as exposures secured by a mortgage on residential property, instead of being treated as guaranteed exposures, for the purposes of Part three, Title II, Chapters 2, 3 and 4 as applicable, where in a Member State the following conditions for those retail loans have been fulfilled:

(a) the majority of loans to natural persons for the purchase of residential properties in that Member State are not provided as mortgages in legal form;

(b) the majority of loans to individuals for the purchase of residential properties in that Member State are guaranteed by a guarantor with a credit assessment by an nominated ECAI corresponding to a credit quality step of 1 or 2, that is required to repay the institution in full where the original borrower defaults;

(c) the institution has the legal right to take a mortgage on the residential property in the event that the guarantor referred to in point (b) fails.

Competent authorities shall inform EBA where the conditions referred in points (a), (b) and (c) are met in the national territories of their jurisdictions, and shall provide the names of guarantors eligible to that treatment which fulfil the conditions of this paragraph and paragraph 4.

EBA shall publish the list of all such eligible guarantors on its website and update that list yearly.

4. For the purposes of paragraph 3, loans referred to in that paragraph may be treated as exposures secured by a mortgage on residential property, instead of being treated as guaranteed exposures, where all of the following conditions are met:

(a) for an exposure that is treated under the Standardised Approach the exposure meets all of the requirements to be assigned to the Standardised Approach 'exposures secured by mortgages on immovable property' exposure class pursuant to Articles 124 and 125 with the exception that the institution granting the loan does not hold a mortgage over the residential property;

(b) for an exposure that is treated under the IRB Approach, the exposure meets all of the requirements to be assigned to the IRB exposure class 'retail exposures secured by residential property' referred to in Article 147(2), (d)(ii), with the exception that the institution granting the loan does not hold a mortgage over the property;

(c) there is no mortgage lien on the residential property when the loan is granted and the borrower is contractually committed not to grant any mortgage lien without the consent of the institution that originally granted the loan;

(d) the guarantor is an eligible protection provider as referred to in Article 201, and the guarantor has a credit assessment by an ECAI corresponding to a credit quality step of 1 or 2;

(e) the guarantor is an institution or a financial sector entity subject to capital requirements at least equivalent to those applicable to institutions or insurance undertakings;

(f) the guarantor has established a fully-funded mutual guarantee fund or equivalent protection for insurance undertakings to absorb credit risk losses, the calibration of which is periodically reviewed by its competent authority and is subject to yearly stress testing;

(g) the institution is contractually and legally allowed to take a mortgage on the residential property in the event that the guarantor fails;

(h) the institution that decides to exercise the option provided for in paragraph 3 for a given eligible guarantor under the mechanism referred to in paragraph 3, shall do so for all its retail exposures guaranteed by that guarantor under that mechanism.';

(33) the following Article 110a is inserted:

'Article 110a

Monitoring of contractual arrangements that are not commitments

'Institutions shall monitor contractual arrangements that meet all the conditions specified in Article 5, point (9), second subparagraph, points (a) to (e), and shall document to the satisfaction of their competent authorities their compliance with all those conditions.';

(34) Article 111 is replaced by the following:

'Article 111

Exposure value

'1. The exposure value of an asset item shall be its accounting value remaining after specific credit risk adjustments in accordance with Article 110, additional value adjustments in accordance with Article 34 related to the non-trading book business of the institution, amounts deducted in accordance with Article 36(1), point (m), and other own funds reductions related to the asset item have been applied.

2. The exposure value of an off-balance sheet item listed in Annex I shall be the following percentage of the item's nominal value after the deduction of specific credit risk adjustments in accordance with Article 110 and amounts deducted in accordance with Article 36(1), point (m):

(a) 100 % for items in bucket 1;

(b) 50 % for items in bucket 2;

(c) 40 % for items in bucket 3;

(d) 20 % for items in bucket 4;

(e) 10 % for items in bucket 5.

3. The exposure value of a commitment on an off-balance sheet item as referred to in paragraph 2 shall be the lower of the following percentages of the commitment's nominal value after the deduction of specific credit risk adjustments and amounts deducted in accordance with Article 36(1), point (m):

(a) the percentage referred to in paragraph 2 that is applicable to the item on which the commitment is made;

(b) the percentage referred to in paragraph 2 that is applicable to the type of commitment.

4. For contractual arrangements offered by an institution, but not yet accepted by the client, that would become commitments if accepted by the client, and contractual arrangements that would qualify as commitments but meet the conditions for not

being treated as commitments, the percentage applicable to that type of contractual arrangement shall be that provided for in accordance with paragraph 2.

5. Where an institution is using the Financial Collateral Comprehensive Method referred to in Article 223, the exposure value of securities or commodities sold, posted or lent under a repurchase transaction or under a securities or commodities lending or borrowing transaction, and of margin lending transactions shall be increased by the volatility adjustment appropriate to such securities or commodities in accordance with Articles 223 and 224.

6. The exposure value of a derivative instrument listed in Annex II shall be determined in accordance with Chapter 6, taking into account the effects of contracts of novation and other netting agreements as specified in that Chapter. The exposure value of repurchase transactions, securities or commodities lending or borrowing transactions, long settlement transactions and margin lending transactions may be determined in accordance with either Chapter 4 or Chapter 6.

7. Where the exposure is covered by a funded credit protection, the exposure value may be amended in accordance with Chapter 4.

8. EBA shall develop draft regulatory technical standards to specify:

(a) the criteria that institutions shall use to assign off-balance sheet items, with the exception of items already included in Annex I, to the buckets 1 to 5 referred to in Annex I;

(b) the factors that may constrain the institutions' ability to cancel the unconditionally cancellable commitments referred to in Annex I;

(c) the process for notifying EBA about the institutions' classification of other off-balance sheet items carrying similar risks as those referred to in Annex I.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 1 year after the entry into force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.';

(35) in Article 112, point (k) is replaced by the following:

'(k) subordinated debt exposures;';

(36) Article 113 is amended as follows :

(a) paragraph 1 is replaced by the following:

'1. To calculate risk-weighted exposure amounts, risk weights shall be applied to all exposures, unless those exposures have been deducted from own funds, in accordance with Section 2, based on the exposure class to which those exposures are assigned and, to the extent specified in Section 2, based on the credit quality of those exposure. Credit quality may be determined by reference to the credit assessments of ECAIs or the credit assessments of export credit agencies in accordance with Section 3. With the exception of exposures assigned to the exposure classes laid down in Article 112, point (a), (b), (c) and (e), where the assessment in accordance with Article 79, point (b) of Directive 2013/36/EU reflects higher risk characteristics than those implied by the credit assessment of the nominated ECAI or export credit agency, the institution shall assign a risk weight at least one credit quality step higher than the risk weight implied by the credit assessment of the nominated ECAI or export credit agency.';

(b) paragraph 3 is replaced by the following:

'3. Where an exposure is subject to credit protection, the exposure value or the applicable risk weight to that exposure, as appropriate, may be amended in accordance with this Chapter and Chapter 4.';

(37) in Article 119, paragraphs 2 and 3 are deleted;

(38) in Article 120, paragraphs 1 and 2 are replaced by the following:

'1. Exposures for which a credit assessment by a nominated ECAI is available shall be assigned a risk weight in accordance with Table 3 which corresponds to the credit assessment of the ECAI in accordance with Article 136.

Table 3

Credit quality step	1	2	3	4	5	6
Risk weight	20 %	30 %	50 %	100 %	100 %	150 %

2. Exposures with an original maturity of three months or less for which a credit assessment by a nominated ECAI is available and exposures which arise from the movement of goods across national borders with an original maturity of six months or less and for which a credit assessment by a nominated ECAI is available, shall be assigned a risk weight in accordance with Table 4 which corresponds to the credit assessment of the ECAI in accordance with Article 136.

Table 4

Credit quality step	1	2	3	4	5	6
Risk weight	20 %	20 %	20 %	50 %	50 %	150 %

(39) Article 121 is replaced by the following:

'Article 121

Exposures to unrated institutions

1. Exposures to institutions for which a credit assessment by a nominated ECAI is not available shall be assigned to one of the following grades:

(a) where all of the following conditions are met, exposures to institutions shall be assigned to Grade A:

(i) the institution has adequate capacity to meet its financial commitments, including repayments of principal and interest, in a timely manner, for the projected life of the assets or exposures and irrespective of the economic cycles and business conditions;

(ii) the institution meets or exceeds the requirement laid down in Article 92(1), the specific own funds requirements referred to in Article 104a of Directive 2013/36/EU, the combined buffer requirement defined in Article 128, point (6), of Directive 2013/36/EU and any equivalent or additional local supervisory or regulatory requirements in third countries, insofar as those requirements are published and are to be met by Common Equity Tier 1 capital, Tier 1 capital or own funds;

(iii) information about the requirements referred to in point (ii) is publicly disclosed or otherwise made available;

(iv) the assessment in accordance with Article 79 of Directive 2013/36/EU has not revealed that the institution does not meet the conditions set out in points (i) and (ii);

(b) where all of the following conditions are met and at least one of the conditions in point (a) is not met, exposures to institutions shall be assigned to Grade B:

(i) the institution is subject to substantial credit risk, including repayment capacities that are dependent on stable or favorable economic or business conditions;

(ii) the institution meets or exceeds the requirement laid down in Article 92(1), the requirements referred to in Articles 458 and 459, the specific own funds requirements referred to in Article 104a of Directive 2013/36/EU and any equivalent or additional local supervisory or regulatory requirements insofar as those requirements are published and are to be met by Common Equity Tier 1 capital, Tier 1 capital and own funds;

(iii) information about the requirements referred to in point (ii) is publicly disclosed or otherwise made available;

(iv) the assessment performed in accordance with Article 79 of Directive 2013/36/EU has not revealed that the institution does not meet the conditions set out in points (i) and (ii).

For the purposes of point (ii), equivalent or additional local supervisory or regulatory requirements shall not include capital buffers equivalent to those defined in Article 128 of Directive 2013/36/EU.

(c) where the conditions for assignment to Grade A or Grade B are not met, or where any of the following conditions is met, exposures to institutions shall be assigned to Grade C:

(i) the institution has material default risks and limited margins of safety;

(ii) adverse business, financial, or economic conditions are very likely to lead, or have led, to the institution's inability to meet its financial commitments;

(iii) where audited financial statements are required by law for the institution, the external auditor has issued an adverse audit opinion or has expressed substantial doubt in its financial statements or audited reports within the previous 12 months about the institution's ability to continue as a going concern institution.

2. Exposures assigned to Grade A, B or C in accordance with paragraph 1 shall be assigned a risk weight as follows:

(a) exposures assigned to Grade A, B or C which meet any of the following conditions shall be assigned a risk weight for short-term exposures in accordance with Table 5:

(i) the exposure has an original maturity of three months or less;

(ii) the exposure has an original maturity of six months or less and arises from the movement of goods across national borders.

(b) exposures assigned to Grade A which are not short-term shall be assigned a risk weight of 30 % where all of the following conditions are met:

(i) the exposure does not meet any of the conditions laid down in point (a);

(ii) the institution's Common Equity Tier 1 capital ratio is equal to or higher than 14 %;

(iii) the institution's leverage ratio is higher than 5 %.

(c) exposures assigned to Grade A, B or C that do not meet the conditions in point (a) or (b) shall be assigned a risk weight in accordance with the Table 5.

Where an exposure to an institution is not denominated in the domestic currency of the jurisdiction of incorporation of that institution, or where that institution has booked the credit obligation in a branch in a different jurisdiction and the exposure is not in the domestic currency of the jurisdiction in which the branch operates, the risk weight assigned in accordance with points (a), (b) or (c), as applicable, to exposures other than those with a maturity of one year or less stemming from self-liquidating, trade-related contingent items that arise from the movement of goods across national borders shall not be lower than the risk weight of an exposure to the central government of the country where the institution is incorporated.

Table 5

Credit risk assessment	Grade A	Grade B	Grade C
Risk weight for short-term exposures	20 %	50 %	75 %
Risk weight	40 %	75 %	150 %

';

(40) Article 122 is amended as follows:

(a) in paragraph 1, Table 6 is replaced by the following:

'*Table 6*

Credit quality step	1	2	3	4	5	6
Risk weight	20 %	50 %	75 %	100 %	150 %	150 %

';

(b) paragraph 2 is replaced by the following:

'Exposures for which such a credit assessment is not available shall be assigned a risk weight of 100 %.';

(41) the following Article 122a is inserted:

'Article 122a

Specialised lending exposures

1. Within the corporate exposure class laid down in Article 112, point (g), institutions shall separately identify as specialised lending exposures, exposures with all the following characteristics:

(a) the exposure is to an entity which was created specifically to finance or operate physical assets or is an exposure that is economically comparable to such an exposure;

(b) the exposure is not secured by immovable property or otherwise related to the financing of real estate ;

(c) the contractual arrangements governing the obligation related to the exposure give the institution a substantial degree of control over the assets and the income that they generate;

(d) the primary source of repayment of the obligation related to the exposure is the income generated by the assets being financed, rather than the independent capacity of a broader commercial enterprise.

2. Specialised lending exposures for which a directly applicable credit assessment by a nominated ECAI is available shall be assigned a risk weight in accordance with Table 6aa:

Table 6aa

Credit quality Step	1	2	3	4	5
Risk Weight	20 %	50 %	75 %	100 %	150 %

3. Specialised lending exposures for which a directly applicable credit assessment is not available shall be risk weighted as follows:

(a) where the purpose of a specialised lending exposure is to finance the acquisition of physical assets, including ships, aircraft, satellites, railcars, and fleets, and the income to be generated by those assets comes in the form of cash flows generated by the specific physical assets that have been financed and pledged or assigned to the lender by one or several third parties ('object finance exposures'), institutions shall apply the following risk weights:

(i) 80 % where the exposure is deemed to be high quality when taking into account all of the following criteria:

– the obligor can meet its financial obligations even under severely stressed conditions due to the presence of all of the following features:

- adequate exposure-to-value of the exposure;
- conservative repayment profile of the exposure;
- commensurate remaining lifetime of the assets upon full pay-out of the exposure or alternatively recourse to a protection provider with high creditworthiness;

- low refinancing risk of the exposure by the obligor or that risk is adequately mitigated by a commensurate residual asset value or recourse to a protection provider with high creditworthiness;
- the obligor has contractual restrictions over its activity and funding structure;
- the obligor uses derivatives only for risk-mitigation purposes;
- material operating risks are properly managed;

– the contractual arrangements on the assets provide lenders with a high degree of protection including the following features:

- the lenders have a legally enforceable first-ranking right over the assets financed, and, where applicable, over the income that they generate;
- there are contractual restrictions on the ability of the obligor to change anything to the asset which would have a negative impact on its value;
- where the asset is under construction, the lenders have a legally enforceable first-ranking right over the assets and the underlying construction contracts;

– the assets being financed meet all of the following standards to operate in a sound and effective manner:

- the technology and design of the asset are tested;
- all necessary permits and authorisations for the operation of the assets have been obtained;
- where the asset is under construction, the obligor has adequate safeguards on the agreed specifications, budget and completion date of the asset, including strong completion guarantees or the involvement of an experienced constructor and adequate contract provisions for liquidated damages;

(ii) 100 % where the exposure is not deemed to be high quality as referred to in point (i);

(b) where the purpose of a specialised lending exposure is to provide for short-term financing of reserves, inventories or receivables of exchange-traded commodities, including crude oil, metals, or crops, and the income to be generated by those reserves, inventories or receivables is to be the proceeds from the sale of the commodity (‘commodities finance exposures’), institutions shall apply a risk weight of 100 %;

(c) where the purpose of a specialised lending exposure is to finance a project for the development or acquisition of large, complex and expensive installations, including power plants, chemical processing plants, mines, transportation infrastructure, environment, and telecommunications infrastructure, and the income to be generated by the project is the money generated by the contracts for the output of the installation obtained from one or several parties which are not under management control of the sponsor ('project finance exposures'), institutions shall apply the following risk weights:

(i) 130 % where the project to which the exposure is related is in the pre-operational phase;

(ii) provided that the adjustment to own funds requirements for credit risk referred to in Article 501a is not applied, 80 % where the project to which the exposure is related is in the operational phase and the exposure meets all of the following criteria:

– there are contractual restrictions on the ability of the obligor to perform activities that may be detrimental to lenders, including the restriction that new debt cannot be issued without the consent of existing debt providers;

– the obligor has sufficient reserve funds fully funded in cash, or other financial arrangements, with highly rated guarantors to cover the contingency funding and working capital requirements over the lifetime of the project being financed;

– the obligor generates cash flows that are predictable and cover all future loan repayments;

– the source of repayment of the obligation depends on one main counterparty and that main counterparty is one of the following:

  - a central bank, a central government, a regional government or a local authority, provided that they are assigned a risk weight of 0 % in accordance with Articles 114 and 115, or are assigned an ECAI rating with a credit quality step of at least 3;

  - a public sector entity, provided that that entity is assigned a risk weight of 20 % or below in accordance with Article 116, or is assigned an ECAI rating with a credit quality step of at least 3;

  - a corporate entity which has been assigned an ECAI rating with a credit quality step of at least 3.

– the contractual provisions governing the exposure to the obligor provide for a high degree of protection for the lending institution in case of a default of the obligor;

– the contractual arrangements effectively protect the lending institution against losses resulting from the termination of the project;

– all assets and contracts necessary to operate the project have been pledged to the lending institution to the extent permitted by applicable law;

– equity is pledged to the lending institution such that they are able to take control of the obligor entity upon default;

(iii) 100 % where the project to which the exposure is related is in the operational phase and the exposure does not meet the conditions laid down in point (ii) of this subparagraph;

(d) for the purposes of point (c)(ii), third indent, the cash flows generated shall not be considered predictable unless a substantial part of the revenues satisfies one or more of the following conditions:

(i) the revenues are availability-based;

(ii) the revenues are subject to a rate-of-return regulation;

(iii) the revenues are subject to a take-or-pay contract;

(e) for the purposes of point (c), the operational phase shall mean the phase in which the entity that was specifically created to finance the project meets both of the following conditions:

(i) the entity has a positive net cash flow that is sufficient to cover any remaining contractual obligation;

(ii) the entity has a declining long term debt.

4. EBA shall develop draft regulatory technical standards specifying in further detail the conditions under which the criteria set out in paragraph 3, point (a)(i) and point (c)(ii), are met.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 1 year after the date of entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.';

(42) Article 123 is replaced by the following:

'Article 123
Retail exposures

1. Exposures that comply with all of the following criteria shall be considered retail exposures:

(a) the exposure is either of the following:

(i) an exposure to one or more natural persons;

(ii) an exposure to an SME within the meaning of Article 5, point (8), where the total amount owed to the institution, its parent undertakings and its subsidiaries, by the obligor or group of connected clients, including any exposure in default but excluding exposures secured by residential property up to the property value shall not, to the knowledge of the institution, which shall take reasonable steps to confirm the situation, exceed EUR 1 million;

(b) the exposure represents one of a significant number of exposures with similar characteristics, such that the risks associated with such exposure are substantially reduced;

(c) the institution concerned treats the exposure in its risk management framework and manages the exposure internally as retail exposure consistently over time and in a manner that is similar to the treatment by the institution of other retail exposures.

The present value of retail minimum lease payments shall be eligible for the retail exposure class.

EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, to specify proportionate diversification methods under which an exposure is to be considered as one of a significant number of similar exposures as specified in point (b), by [OP please insert the date = 1 year after entry into force of this Regulation].

2. The following exposures shall not be considered to be retail exposures:

(a) non-debt exposures conveying a subordinated, residual claim on the assets or income of the issuer;

(b) debt exposures and other securities, partnerships, derivatives, or other vehicles, the economic substance of which is similar to the exposures specified in point (a);

(c) all other exposures in the form of securities.

3. Retail exposures as referred to in paragraph 1 shall be assigned a risk weight of 75 %, with the exception of transactor exposures, which shall be assigned a risk weight of 45 %.

4. By way of derogation from paragraph 3, exposures due to loans granted by an institution to pensioners or employees with a permanent contract against the unconditional transfer of part of the borrower’s pension or salary to that institution shall be assigned a risk weight of 35 %, provided that all the following conditions are met:

(a) to repay the loan, the borrower unconditionally authorises the pension fund or employer to make direct payments to the institution by deducting the monthly payments on the loan from the borrower’s monthly pension or salary;

(b) the risks of death, inability to work, unemployment or reduction of the net monthly pension or salary of the borrower are properly covered through an insurance policy to the benefit of the institution;

(c) the monthly payments to be made by the borrower on all loans that meet the conditions set out in points (a) and (b) do not in aggregate exceed 20 % of the borrower’s net monthly pension or salary;

(d) the maximum original maturity of the loan is equal to or less than ten years.’;

(43) the following Article 123a is inserted:

‘Article 123a

Exposures with a currency mismatch

1. Exposures to natural persons assigned to any of the exposures classes laid down in point (h) or (i) of Article 112, the risk weight assigned in accordance with Chapter 2 shall be multiplied by a factor of 1,5, whereby the resulting risk weight shall not be higher than 150 %, where the following conditions are met.

(a) the exposure is due to a loan denominated in a currency which is different from the currency of the obligor's source of income;

(b) the obligor does not have a hedge for its payment risk due to the currency mismatch, either by a financial instrument or foreign currency income that matches the currency of the exposure, or the total of such hedges available to the borrower cover less than 90 % of any instalment for this exposure.

Where an institution is unable to single out those exposures with a currency mismatch, the risk weight multiplier of 1,5 shall apply to all unhedged exposures where the currency of the exposures is different from the domestic currency of the country of residence of the obligor.

2. For the purposes of this Article, source of income refers to any source that generates cash flows to the obligor, including from remittances, rental incomes or salaries, whilst excluding proceeds from selling assets or similar recourse actions by the institution.';

(44) Article 124 is replaced by the following:

'Article 124

Exposures secured by mortgages on immovable property

1. A non-ADC exposure that does not meet all of the conditions laid down in paragraph 3 shall be treated as follows:

(a) a non-IPRE exposure shall be treated as an exposure not secured by the immovable property concerned;

(b) an IPRE exposure shall be risk-weighted at 150 %.

2. A non-ADC exposure secured by an immovable property, where all the conditions laid down in paragraph 3 are met and, shall be treated as follows:

(a) where the exposure is secured by a residential property, the exposure shall not qualify as an IPRE exposure and shall be treated in accordance with Article 125(1) where the exposure meets any of the following conditions:

(i) the immovable property securing the exposure is the obligor's primary residence, either where the immovable property as a whole constitutes a single housing unit or where the immovable property securing the exposure is a housing unit that is a separated part within an immovable property;

(ii) the exposure is to an individual and is secured by an income-producing residential housing unit, either where the immovable property as a whole constitutes a single housing unit or where the housing unit is a separated part within the immovable property, and total exposures of the institution to that individual are not secured by more than four immovable properties, including those which are not residential properties or which do not meet any of the criteria in this point, or separate housing units within immovable properties;

(iii) the exposure secured by residential property is to associations or cooperatives of individuals that are regulated by law and solely exist to grant their members the use of a primary residence in the property securing the loans;

(iv) the exposure is secured by residential property to public housing companies or not-for-profit associations that are regulated by law and exist to serve social purposes and to offer tenants long-term housing;

(b) where the exposure is secured by residential property and the exposure does not meet any of the conditions laid down in point (a), points (i) to (iv), the exposure shall be treated in accordance with Article 125(2);

(c) where the exposure is secured by a commercial immovable property, the exposure shall be treated as follows:

(i) a non-IPRE exposure shall be treated in accordance with Article 126(1);

(ii) an IPRE exposure shall be treated in accordance with Article 126(2).

3. In order to be eligible for the treatment laid down in paragraph 2, an exposure secured by an immovable property shall fulfil all of the following conditions:

(a) the immovable property securing the exposure meets any of the following conditions:

(i) the immovable property has been fully completed;

(ii) the immovable property is forest or agricultural land;

(iii) the immovable property is residential property under construction or it is land upon which a residential property is planned to be constructed where that plan has been approved by all authorities concerned and where any of the following conditions is met:

– the property does not have more than four residential housing units and will be the primary residence of the obligor and the lending to the individual is not indirectly financing ADC exposures;

– a central government, regional government or local authority or a public sector entity, exposures to which are treated in accordance with Articles 115(2) and 116(4), respectively, has the legal powers and ability to ensure that the property under construction will be finished within a reasonable time frame and is required to or has committed in a legally binding manner to do so where the construction would otherwise not be finished within a reasonable time frame;

(b) the exposure is secured by a first lien held by the institution on the immovable property, or the institution holds the first lien and any sequentially lower ranking lien on that property;

(c) the property value is not materially dependent upon the credit quality of the obligor;

(d) all the information required at origination of the exposure and for monitoring purposes is properly documented, including information on the ability of the obligor to repay and on the valuation of the property;

(e) the requirements set out in Article 208 are met and the valuation rules set out in Article 229(1) are complied with.

For the purposes of point (c), institutions may exclude situations where purely macro-economic factors affect both the value of the property and the performance of the obligor.

4. By way of derogation from paragraph 3, point (b), in jurisdictions where junior liens provide the holder with a claim on collateral that is legally enforceable and constitutes an effective credit risk mitigant, junior liens held by an institution other

than the one holding the senior lien may also be recognised, including where the institution does not hold the senior lien or does not hold a lien ranking between a more senior lien and a more junior lien both held by the institution.

For the purposes of the first subparagraph, the rules governing the liens shall ensure all of the following:

(a) each institution holding a lien on a property can initiate the sale of the property independently from other entities holding a lien on the property;

(b) where the sale of the property is not carried out by means of a public auction, entities holding a senior lien take reasonable steps to obtain a fair market value or the best price that may be obtained in the circumstances when exercising any power of sale on their own;

5. For the purposes of Article 125(2) and Article 126(2), the exposure-to-value ('ETV') ratio shall be calculated by dividing the gross exposure amount by the property value subject to the following conditions:

(a) the gross exposure amount shall be calculated as the outstanding amount of credit obligation related to the exposure secured by the immovable property and any undrawn but committed amount that, once drawn, would increase the exposure value of the exposure which is secured by the immovable property.;

(b) the gross exposure amount shall be calculated without taking into account credit risk adjustments and other own funds reductions related to the exposure or any form of funded or unfunded credit protection, except for pledged deposits accounts with the lending institution that meet all requirements for on-balance sheet netting, either under master netting agreements in accordance with Articles 196 and 206 or under other on-balance sheet netting agreements in accordance with Articles 195 and 205 and have been unconditionally and irrevocably pledged for the sole purposes of fulfilling the credit obligation related to the exposure secured by the immovable property;

(c) exposures that have to be treated in accordance with Article 125(2) or 126(2) where a party other than the institution holds a senior lien and a junior lien held by the institution is recognised according to paragraph 4, the gross exposure amount shall be calculated as the sum of the gross exposure amount of the institution's lien and of the gross exposure amounts for all other liens of equal or higher ranking seniority than the institution's lien. Where there is insufficient information for ascertaining the ranking of the other liens, the institution should treat these liens as ranking pari passu with the junior lien held by the institution. The institution shall first determine the risk weight in accordance with Article 125(2) or Article 126(2) ('base risk weight'), as applicable. It shall then adjust this risk weight by a multiplier of 1.25, for the purposes of calculating the risk-weighted amounts of junior liens. Where the base risk weight corresponds to the lowest ETV bucket, the multiplier shall not be applied. The risk weight resulting from multiplying the base risk weight by 1.25 shall be capped at the risk weight that would be applied to the exposure if the requirements in paragraph 3 would not met.

For the purposes of point (a), where an institution has more than one exposure secured by the same immovable property and these exposures are secured by liens on this immovable property sequential in ranking order without any lien held by a third party ranking in-between, the exposures shall be treated as a single combined exposure and the gross exposure amounts for the individual exposures shall be summed up to calculate the gross exposure amount for the single combined exposure.

6. Member States shall designate an authority to be responsible for the application of paragraph 7. That authority shall be the competent authority or the designated authority.

Where the authority designated by the Member State for the application of this Article is the competent authority, it should ensure that the relevant national bodies and authorities which have a macroprudential mandate are duly informed of the competent authority's intention to make use of this Article, and are appropriately involved in the assessment of financial stability concerns in its Member State in accordance with paragraph 6.

Where the authority designated by the Member State for the application of this Article is different from the competent authority, the Member State shall adopt the necessary provisions to ensure proper coordination and exchange of information between the competent authority and the designated authority for the proper application of this Article. In particular, authorities shall be required to cooperate closely and to share all the information that may be necessary for the adequate performance of the duties imposed upon the designated authority pursuant to this Article. That cooperation shall aim at avoiding any form of duplicative or inconsistent action between the competent authority and the designated authority, as well as ensuring that the interaction with other measures, in particular measures taken under Article 458 of this Regulation and Article 133 of Directive 2013/36/EU, is duly taken into account.

7. Based on the data collected under Article 430a on any other relevant indicators, the authority designated in accordance with paragraph 6 of this Article shall periodically, and at least annually, assess whether the weights laid down in Article 125 and Article 126 for exposures secured by immovable property located in their territory are appropriately based on:

(a) the loss experience of exposures secured by immovable property;

(b) forward-looking immovable property markets developments.

Where, on the basis of the assessment referred to in the first subparagraph, the authority designated in accordance with paragraph 6 of this Article concludes that the risk weights set out in Article 125 or 126 do not adequately reflect the actual risks related to exposures to one or more property segments secured by mortgages on residential property or on commercial immovable property located in one or more parts of the territory of the Member State of the relevant authority, and if it considers that the inadequacy of the risk weights could adversely affect current or future financial stability in its Member State, it may increase the risk weights applicable to those exposures within the ranges determined in the fourth subparagraph of this paragraph or impose stricter criteria than those set out in paragraph 3 of this Article.

The authority designated in accordance with paragraph 6 of this Article shall notify EBA and the ESRB of any adjustments to risk weights and criteria applied pursuant to this paragraph. Within one month of receipt of that notification, EBA and the ESRB shall provide their opinion to the Member State concerned. EBA and the ESRB shall publish the risk weights and criteria for exposures referred to in Articles 125, 126 and Article 199(1), point (a), as implemented by the relevant authority.

For the purposes of the second subparagraph of this paragraph, the authority designated in accordance with paragraph 6 may increase the risk weights laid down in Article 125(1), point (a), or Article 126(1), point (a). The authority shall not increase those to more than 150 %.

8. Where the authority designated in accordance with paragraph 6 sets higher risk weights or stricter criteria pursuant to the paragraph 2, second subparagraph; institutions shall have a six-month transitional period to apply them.

9. EBA, in close cooperation with the ESRB, shall develop draft regulatory technical standards to specify the types of factors to be considered for the assessment of the appropriateness of the risk weights referred in the paragraph 7.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2024.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

10. The ESRB may, by means of recommendations in accordance with Article 16 of Regulation (EU) No 1092/2010, and in close cooperation with EBA, give guidance to authorities designated in accordance with paragraph 6 of this Article on both of the following:

(a) factors which could 'adversely affect current or future financial stability' referred to in the second subparagraph of paragraph 7;

(b) indicative benchmarks that the authority designated in accordance with paragraph 6 is to take into account when determining higher risk weights.

11. Institutions established in a Member State shall apply the risk weights and criteria that have been determined by the authorities of another Member State in accordance with paragraph 7 to all their corresponding exposures secured by mortgages on residential property or commercial immovable property located in one or more parts of that other Member State.';

(45) Article 125 is replaced by the following:

'Article 125

Exposures secured by mortgages on residential immovable property

1. An exposure secured by a residential property that complies with any of the conditions laid down in Article 124(2), point (a), points (i) to (iv), shall be treated as follows:

(a) the part of the exposure up to 55 % of the property value remaining after any senior or pari passu ranking liens not held by the institution have been deducted shall be assigned a risk weight of 20 %.

For the purposes of this point, where, in accordance with Article 124(7), the competent or designated authority, as applicable, has set a higher risk weight or a lower percentage of the property value than those referred to in this point, institutions shall use the risk weight and percentage set in accordance with Article 124(7).

(b) the remaining part of the exposure, if any, shall be treated as an exposure that is not secured by residential property.

2. An exposure secured by a residential property that does not meet any of the conditions laid down in Article 124(2), point (a), points (i) to (iv), shall be assigned the higher between the risk weight set in accordance with the following Table 6aaa, and the risk weight set in accordance with Article 124(7):

Table 6aaa

ETV	ETV ≤ 50 %	50 % < ETV ≤ 60 %	60 % < ETV ≤ 80 %	80 % < ETV ≤ 90 %	90 % < ETV ≤100 %	ETV > 100 %
Risk weight	30 %	35 %	45 %	60 %	75 %	105 %

,

By way of derogation from the first subparagraph of this paragraph, institutions may apply the treatment referred to in paragraph 1 to exposures secured by residential property which is situated within the territory of a Member State, where the loss rates for such exposures published by the competent authorities of that Member State in accordance with Article 430a(3) do not exceed any of the following limits for losses aggregated across all institutions with such exposures existing in the previous year:

(a) the losses on the part of the exposures up to 55 % of the property value do not exceed 0,3 % of the total amount, across all those exposures, of credit obligations outstanding in that year.

For the purposes of this point, where, in accordance with Article 124(7), the competent or designated authority, as applicable, has set a lower percentage of the property value than the one referred to in this point, institutions shall use the percentage set in accordance with Article 124(7);

(b) the losses on the part of the exposures up to 100 % of the property value do not exceed 0,5 % of the total amount, across all these exposures, of credit obligations outstanding in that year.

(46) Article 126 is replaced by the following:

'Article 126

Exposures secured by mortgages on commercial immovable property

1. An exposure as referred to in Article 124(2), point (c)(i) shall be treated as follows:

(a) the part of the exposure up to 55 % of the property value reduced by any senior or pari passu ranking liens not held by the institution shall be assigned a risk weight of 60 %, unless that part of the exposure is subject to a higher risk weight or lower percentage of the property value where decided in accordance with Article 124(7);

(b) the remaining part of the exposure, if any, shall be treated as an exposure that is not secured by this immovable property.

2. An exposure as referred to in Article 124(2), point (c)(ii) shall be assigned the higher between the risk weight set in accordance with Table 6c and the risk weight set in accordance with Article 124(7):

Table 6c

	ETV ≤ 60 %	60 % < ETV ≤ 80 %	ETV > 80 %
Risk weight	70 %	90 %	110 %

By way of derogation from the first subparagraph of this paragraph, institutions may apply the treatment referred to in paragraph 1 to an exposure secured by a commercial property which is situated within the territory of a Member State, where the loss rates for such exposures published by the competent authorities of that Member State in accordance with Article 430a(3) do not exceed any of the following limits for losses aggregated across all such exposures existing in the previous year:

(a) the losses on the part of the exposures up to 55 % of the property value do not exceed 0,3 % of the total amount of credit obligations outstanding in that year.

For the purposes of this point, where, in accordance with Article 124(7), the competent or designated authority, as applicable, has set a lower percentage of the property value than the one referred to in this point, institutions shall use the percentage set in accordance with Article 124(7);

(b) the losses on the part of the exposures up to 100 % of the property value do not exceed 0,5 % of the total amount of credit obligations outstanding in that year.

(47) a new Article 126a is inserted:

‘Article 126a

Land acquisition, development and construction exposures

1. An ADC exposure shall be assigned a risk weight of 150 %.

2. ADC exposures to residential property, however, may be risk weighted at 100 %, provided that, where applicable, the institution applies sound origination and monitoring standards which meet the requirements of Articles 74 and 79 of Directive 2013/36/EU and where at least one of the following conditions is met:

(a) legally binding pre-sale or pre-lease contracts, for which the purchaser or tenant has made a substantial cash deposit which is subject to forfeiture if the contract is terminated, amount to a significant portion of total contracts;

(b) the obligor has substantial equity at risk, which is represented as an appropriate amount of obligor-contributed equity to the residential property's appraised value upon completion.

3. EBA shall by [OP please insert date = 1 year after entry into force] issue guidelines specifying the terms "substantial cash deposits", “appropriate amount of obligor-contributed equity”, "significant portion of total contracts", and "substantial equity at risk".

Those guidelines shall be adopted in accordance with Article 16 of Regulation (EU) No 1093/2010.

(48) Article 127 is amended as follows:

(a) in paragraph (1), the following subparagraph is added:

‘For the purposes of calculating the sum of specific credit risk adjustments referred to in this paragraph, institutions shall include in the calculation any positive difference between, on the one hand, the amount owed by the obligor on the exposure and, on the other hand, the sum of:

(i) the additional own funds reduction if the exposure was written off fully; and

(ii) any already existing own funds reductions related to that exposure.'

(b) paragraph 2 is replaced by the following:

'2. For the purposes of determining the secured part of a defaulted exposure, collateral and guarantees shall be eligible for credit risk mitigation purposes in accordance with Chapter 4.';

(c) paragraphs 3 is replaced by the following:

'3. The exposure value remaining after specific credit risk adjustments of non-IPRE exposures secured by residential or commercial immovable property in accordance with Article 125 and 126, respectively, shall be assigned a risk weight of 100 % if a default has occurred in accordance with Article 178.';

(d) paragraph 4 is deleted;

(49) Article 128 is replaced by the following:

'Article 128

Subordinated debt exposures

1. The following exposures shall be treated as subordinated debt exposures:

(a) debt exposures which are subordinated to claims of another creditor;

(b) own funds instruments to the extent that those instruments are not considered as equity exposures in accordance with Article 133(1); and

(c) liabilities instruments that meet the conditions set out in Article 72b.

2. Subordinated debt exposures shall be assigned a risk weight of 150 %, unless those subordinated debt exposures are required to be deducted in accordance with Part Two of this Regulation.';

(50) in Article 129(3), the following subparagraph is inserted:

'By way of derogation from the first subparagraph, for the purposes of valuing immovable property, the competent authorities designated pursuant to Article 18(2) of Directive (EU) 2019/2162 may allow that property to be valued at or at less than the market value, or in those Member States that have laid down rigorous criteria for the assessment of the mortgage lending value in statutory or regulatory provisions, the mortgage lending value of that property without applying the limits set out in Article 208(3), point (b).'

(51) in Article 131, Table 7 is replaced by the following:

'*Table 7*

Credit quality step	1	2	3	4	5	6
Risk weight	20 %	20 %	20%	50 %	50 %	150 %

;'

(52) Article 133 is replaced by the following:

'Article 133

Equity exposures

1. All of the following shall be classified as equity exposures:

(a) any exposure meeting all of the following conditions:

(i) the exposure is irredeemable in the sense that the return of invested funds can be achieved only by the sale of the investment or sale of the rights to the investment or by the liquidation of the issuer;

(ii) the exposure does not embody an obligation on the part of the issuer; and

(iii) the exposure conveys a residual claim on the assets or income of the issuer;

(b) instruments that would qualify as Tier 1 items if issued by an institution;

(c) instruments that embody an obligation on the part of the issuer and meet any of the following conditions:

(i) the issuer may defer the settlement of the obligation indefinitely;

(ii) the obligation requires, or permits at the issuer's discretion, settlement by issuance of a fixed number of the issuer's equity shares;

(iii) the obligation requires, or permits at the issuer's discretion, settlement by issuance of a variable number of the issuer's equity shares and, ceteris paribus, any change in the value of the obligation is attributable to, comparable to, and in the same direction as, the change in the value of a fixed number of the issuer's equity shares;

(iv) the holder of the instrument has the option to require that the obligation be settled in equity shares, unless one of the following conditions is met:

– in the case of a traded instrument, the institution has demonstrated to the satisfaction of the competent authority that the instrument is traded on the market more like the debt of the issuer than like its equity;

– in the case of non-traded instruments, the institution has demonstrated to the satisfaction of the competent authority that the instrument should be treated as a debt position.

For the purposes of point (c)(iii), obligations are included that require or permit settlement by issuance of a variable number of the issuer's equity shares, for which the change in the monetary value of the obligation is equal to the change in the fair value of a fixed number of equity shares multiplied by a specified factor, where both the factor and the referenced number of shares are fixed.

For the purposes of point (iv), where one of the conditions laid down in that point is met, the institution may decompose the risks for regulatory purposes, subject to the prior permission by the competent authority.

(d) debt obligations and other securities, partnerships, derivatives or other vehicles structured in a way that the economic substance is similar to the exposures referred to in points (a), (b) and (c), including liabilities from which the return is linked to that of equities;

(e) equity exposures that are recorded as a loan but arise from a debt/equity swap made as part of the orderly realisation or restructuring of the debt.

2. Equity investments shall not be treated as equity exposures in any of the following cases:

(a) the equity investments are structured in a way that their economic substance is similar to the economic substance of debt holdings which do not meet the criteria in any of the points in paragraph 1;

(b) the equity investments constitute securitisation exposures.

3. Equity exposures, other than those referred to in paragraph 4 to 7, shall be assigned a risk weight of 250 %, unless those exposures are required to be deducted or risk-weighted in accordance with Part Two.

4. The following equity exposures to unlisted companies shall be assigned a risk weight of 400 %, unless those exposures are required to be deducted or risk-weighted in accordance with Part Two:

(a) investments for short-term resale purposes;

(b) investments in venture capital firms or similar investments which are acquired in anticipation of significant short-term capital gains.

By way of derogation from the first subparagraph, long-term equity investment, including investments in equities of corporate clients with which the institution has or intends to establish a long-term business relationship as well as venture capital firms and debt-equity swaps for corporate restructuring purposes shall be assigned a risk weight in accordance with paragraph 3 or 5, as applicable. For the purposes of this Article, a long-term equity investment is an equity investment that is held for three years or longer or incurred with the intention to be held for three years or longer as approved by the institution's senior management.

5. Institutions that have received the prior permission of the competent authorities, may assign a risk weight of 100 % to equity exposures incurred under legislative programmes to promote specified sectors of the economy that comply with all of the following conditions:

(a) the legislative programs provide significant subsidies, including in the form of guarantees by multilateral development banks, public development credit institutions as defined Article 429a(2) or international organisations, for the investment to the institution;

(b) the legislative programs involve some form of government oversight;

(c) such equity exposures in aggregate do not exceed 10 % of the institutions own funds.

6. Equity exposures to central banks shall be assigned a risk weight of 100 %.

7. Equity exposures that are recorded as a loan but arise from a debt/equity swap made as part of the orderly realisation or restructuring of the debt shall not be assigned a risk weight lower than the risk weight that would apply had the equity holdings remained in the debt portfolio.';

(53) Article 134 is amended as follows:

(a) paragraph 3 is replaced by the following:

‘3. Cash items in the process of collection shall be assigned a 20 % risk weight. Cash owned and held by the institution or in transit, and equivalent cash items shall be assigned a 0 % risk weight.’;

(b) the following paragraph 8 is added:

‘8. The exposure value of any other item for which no risk weight is provided under Chapter 2 shall be assigned a risk weight of 100 %.’;

(54) in Article 135, the following paragraph 3 is added:

‘3. EBA, EIOPA and ESMA shall by [OP please insert the date = 1 year after entry into force] prepare a report on the impediments to the availability of credit assessments by ECAIs, in particular for corporates, and on possible measures to address them taking into account differences across economic sectors and geographical areas.’;

(55) Article 138 is amended as follow:

(a) the following point (g) is added:

‘(g) an institution shall not use an ECAI credit assessment in relation to an institution that incorporates assumptions of implicit government support, unless the respective ECAI credit assessment refers to an institution owned by or set up and sponsored by central governments, regional governments or local authorities.’;

(b) the following subparagraph is added:

‘For the purposes of point (g), in case of institutions, other than institutions owned by or set up and sponsored by central governments, regional governments or local authorities, for which only ECAI credit assessment exist which do incorporate assumptions of implicit government support, exposures to such institutions shall be treated as exposures to unrated institutions in accordance with Article 121.

Implicit government support means that the central government, regional government or local authority shall act to prevent creditors of the institution from incurring losses in the event of the institution’s default or distress.’;

(56) in Article 139(2), points (a) and (b) are replaced by the following:

‘(a) the credit assessment produces a higher risk weight than would be the case when the exposure is treated as unrated and the exposure concerned:

(i) is not a specialised lending exposure;

(ii) ranks pari passu or junior in all respects to the specific issuing program or facility or to senior unsecured exposures of that issuer, as relevant;

(b) the credit assessment produces a lower risk weight and the exposure concerned:

(i) is not a specialised lending exposure;

(ii) ranks pari passu or senior in all respects to the specific issuing programme or facility or to senior unsecured exposures of that issuer, as relevant.’;

(57) Article 141 is replaced by the following:

‘Article 141

Domestic and foreign currency items

1. A credit assessment that refers to an item denominated in the obligor's domestic currency shall not be used to derive a risk weight for an exposure on that same obligor that is denominated in a foreign currency.

2. By way of derogation from paragraph 1, where an exposure arises through an institution's participation in a loan that has been extended by, or has been guaranteed against convertibility and transfer risk, by a multilateral development bank listed in Article 117(2) the preferred creditor status of which is recognised in the market, the credit assessment on the obligor’s domestic currency item may be used to derive a risk weight for an exposure on that same obligor that is denominated in a foreign currency.

For the purposes of the first subparagraph, where the exposure denominated in a foreign currency is guaranteed against convertibility and transfer risk, the credit assessment on the obligor’s domestic currency item may only be used for risk weighting purposes on the guaranteed part of that exposure. The part of that exposure that is not guaranteed shall be risk-weighted based on a credit assessment on the obligor that refers to an item denominated in that foreign currency.’;

(58) Article 142, paragraph 1 is amended as follows:

(a) the following points (1a) to (1e) are inserted:

‘(1a) ‘exposure class’ means any of the exposure classes referred to in Article 147(2), points (a), (a1)(i), (a1)(ii), (b), (c)(i), (c)(ii), (c)(iii), (d)(i), (d)(ii), (d)(iii), (d)(iv), (e), (e1), (f) and (g);

(1b) ‘corporate exposure class’ means any of the exposure classes referred to in Article 147(2), points (c)(i), (c)(ii) and (c)(iii);

(1c) ‘corporate exposure’ means any exposure assigned to the exposure classes referred to in Article 147(2), points (c)(i), (c)(ii) and (c)(iii);

(1d) ‘retail exposure class’ means any of the exposure classes referred to in Article 147(2), points (d)(i), (d)(ii), (d)(iii) and (d)(iv);

(1e) ‘retail exposure’ means any exposure assigned to the exposure classes referred to in Article 147(2), points (d)(i), (d)(ii), (d)(iii) and (d)(iv);’;

(b) point (2) is replaced by the following:

‘(2) ‘type of exposures’ means a group of homogeneously managed exposures within an exposure class, which may be limited to a single entity or a single sub-set of entities within a group provided that the same type of exposures is managed differently in other entities of the group;’;

(c) points (4) and (5) are replaced by the following:

‘(4) ‘large regulated financial sector entity’ means a financial sector entity which meets all the following conditions:

(a) the entity’s total assets, or the total assets of its parent company where the entity has a parent company, calculated on an individual or consolidated basis, are greater than or equal to EUR 70 billion , using the most recent audited financial statement or consolidated financial statement in order to determine asset size;

(b) the entity is subject to prudential requirements, directly on an individual or consolidated basis, or indirectly from the prudential consolidation of its parent undertaking, in accordance with this Regulation, Regulation (EU) 2019/2033, Directive 2009/138/EC, or legal prudential requirements of a third country at least equivalent to those Union acts;

(5) 'unregulated financial sector entity' means a financial sector entity that does not fulfil the condition laid down in point (4)(b);';

(d) the following point (5a) is inserted:

'(5a) 'large corporate' means any corporate undertaking having consolidated annual sales of more than EUR 500 million or belonging to a group where the total annual sales for the consolidated group is more than EUR 500 million.';'

(e) the following points (8) to (12) are added:

'(8) 'PD/LGD modelling adjustment approach' refers to modelling an adjustment of the LGD or modelling an adjustment of both the PD and the LGD of the underlying exposure in accordance with Article 183(1a);

(9) 'protection-provider-RW-floor' refers to the risk weight applicable to a comparable, direct exposure to the protection provider;

(10) for an exposure to which an institution applies the IRB approach by using its own estimates of LGD under Article 143, 'recognised' unfunded credit protection means an unfunded credit protection the effect of which on the calculation of risk-weighted exposure amounts or expected loss amounts of the underlying exposure is taken into account with one of the following methods, in accordance with Article 108(2a):

(a) PD/LGD modelling adjustment approach;

(b) substitution of risk parameters approach under A-IRB, in accordance with Article 192, point (8);

(11) 'SA-CCF' means the percentage applicable under Chapter 2, by which the nominal value of an off-balance sheet item is multiplied to calculate its exposure value in accordance with Article 111(2);

(12) 'IRB-CCF' means own estimates of CCF.;

(59) Article 143 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Prior permission to the use the IRB Approach, including own estimates of LGDs and CCFs, shall be required for each exposure class and for each rating system and for each approach to estimating LGDs and CCFs used.';

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

'(a) material changes to the range of application of a rating system that the institution has received permission to use;

(b) material changes to a rating system that the institution has received permission to use.';

(c) paragraph 4 and 5 are replaced by the following:

‘4. Institutions shall notify the competent authorities of all changes to rating systems.

5. EBA shall develop draft regulatory technical standards to specify the conditions for assessing the materiality of the use of an existing rating system for other additional exposures not already covered by that rating system and changes to rating systems under the IRB Approach.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert date = 18 months after the entry into force of this amending Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.’;

(60) in Article 144(1), the first subparagraph is amended as follows:

(a) point (f) is replaced by the following:

‘(f) the institution has validated each rating system during an appropriate time period prior to the permission to use that rating system, has assessed during that time period whether the rating system are suited to the range of application of the rating system, and has made necessary changes to those rating systems following from its assessment;’;

(b) point (h) is replaced by the following:

‘(h) the institution has assigned and continues to assign each exposure in the range of application of a rating system to a rating grade or pool of this rating system;’;

(c) paragraph 2 is replaced by the following:

‘2. EBA shall develop draft regulatory technical standards to specify the assessment methodology competent authorities shall follow when assessing the compliance of an institution with the requirements to use the IRB Approach.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2025.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.’;

(61) Article 147 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. Each exposure shall be assigned to one of the following exposure classes:

(a) exposures to central governments and central banks;

(a1) exposures to regional and local authorities and to public sector entities (‘RGLA-PSE’), which shall be divided into the following exposure classes:

(i) exposures to regional and local authorities (‘RGLAs’);

(ii) exposures to public sector entities (‘PSEs’);

(b) exposures to institutions;

(c) exposures to corporates, which shall be divided into the following exposure classes:

(i) general corporates;

(ii) specialised lending ('SL') exposures;

(iii) corporate purchased receivables;

(d) retail exposures, which shall be divided into the following exposure classes:

(i) qualifying revolving retail exposures ('QRREs');

(ii) retail exposures secured by residential property;

(iii) retail purchased receivables;

(iv) other retail exposures;

(e) equity exposures;

(e1) exposures in the form of units or shares in a CIU;

(f) items representing securitisation positions;

(g) other non credit-obligation assets.

(b) in paragraph 3, point (a) is deleted;

(c) the following paragraph 3a is inserted:

'3a. Exposures to regional governments, local authorities or public sector entities shall all be assigned to the exposure class referred to in paragraph 2, point (a1), irrespective of the treatment such exposures would receive under Articles 115 or 116.';

(d) in paragraph 4, points (a) and (b) are deleted;

(e) paragraph 5 is amended as follows:

(i) in point (a), point (ii) is replaced by the following:

'(ii) exposures to an SME within the meaning of Article 5, point (8), provided in that case that the total amount owed to the institution and parent undertakings and its subsidiaries, including any exposure in default, by the obligor client or group of connected clients, but excluding exposures secured by residential property up to the property value does not, to the knowledge of the institution, exceed EUR 1 million, which shall take reasonable steps to verify the amount of that exposure;

(iii) exposures secured by residential property, including first and subsequent liens, term loans, revolving home equity lines of credit, and exposures as referred to in Article 108, paragraphs 3 and 4, regardless of the exposure size, provided that the exposure is either of the following:

– an exposure to a natural person;

– an exposure to associations or cooperatives of individuals that are regulated under national law and exist with the only purpose of granting their members the use of a primary residence in the property securing the loan;';

(ii) the following subparagraphs are added:

‘Exposures fulfilling all the conditions laid down in points (a)(iii), (b), (c), (d) shall be assigned to the exposure class ‘retail exposures secured by residential property’ as referred to in paragraph 2, point (d)(ii).

By way of derogation from the third subparagraph, competent authorities may exclude from the exposure class ‘retail exposures secured by residential property’ as referred to in paragraph 2, point (d)(ii), loans to natural persons who have mortgaged more than four properties or housing units and assign those loans to the corporate exposure class.’;

(iii) the following paragraph 5a is inserted:

‘5a. Retail exposures belonging to a type of exposures meeting all the following conditions may be assigned to the QRRE exposure class:

(a) the exposures of that type of exposures are to individuals;

(b) the exposures of that type of exposures are revolving, unsecured, and to the extent they are not drawn immediately and unconditionally, cancellable by the institution;

(c) the maximum exposure of that type of exposure to a single individual is EUR 100 000 or less;

(d) that type of exposures has exhibited low volatility of loss rates, relative to its average level of loss rates, especially within the low PD bands;

(e) the treatment as a qualifying revolving retail exposure is consistent with the underlying risk characteristics of the type of exposures to which it belongs.

By way of derogation from point (b), the requirement to be unsecured shall not apply in respect of collateralised credit facilities linked to a wage account. In that case, amounts recovered from the collateral shall not be taken into account in the LGD estimate.

Institutions shall identify within the QRRE exposure class transactor exposures (‘QRRE transactors’), as defined in Article 4(1), point (152), and exposures that are not transactor exposures (‘QRRE revolvers’). In particular, QRREs with less than 12 months of repayment history shall be identified as QRRE revolvers.’;

(f) paragraphs 6 and 7 are replaced by the following:

‘6. Unless they are assigned to the exposure class laid down in paragraph 2, point (e1), the exposures referred to in Article 133, paragraph 1 shall be assigned to the equity exposure class laid down in paragraph 2, point (e).

7. Any credit obligation not assigned to the exposure classes laid down in paragraph 2, points (a), (a1), (b), (d), (e) and (f), shall be assigned to one of the exposure classes referred to in point (c) of that paragraph.’;

(g) in paragraph 8, the following subparagraphs are added:

‘Those exposures shall be assigned to the exposure class referred to in paragraph 2, point (c)(ii), and shall be distributed into the following categories:

‘project finance’ (PF), ‘object finance’ (OF), ‘commodity finance’ (CF) and ‘income producing real estate’ (IPRE).

EBA shall develop draft regulatory technical standards to specify the following:

(a) the categorisation to PF, OF and CF, consistently with the definitions of Chapter 2;

(b) the determination of the IPRE category, in particular providing which ADC exposures and exposures secured by immovable property, may or shall be categorised as IPRE, where those exposures do no materially depend on cash flows generated by the property for their repayment.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2025.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.’;

(h) a new paragraph 11 is added:

‘11. EBA shall develop draft regulatory technical standards specifying further the classes referred to in paragraph 2 where necessary and the conditions and criteria for assigning exposures to those classes.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2026.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.’;

(62) Article 148 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

‘1. An institution that is permitted to apply the IRB Approach in accordance with Article 107(1), shall, together with any parent undertaking and its subsidiaries, implement the IRB Approach for at least one of the exposure classes referred to in points (a), (a1)(i), (a1)(ii), (b), (c)(i), (c)(ii), (c)(iii), (d)(i), (d)(ii), d(iii), (d)(iv), (e1), (f) and (g) of Article 147(2). Once an institution implements the IRB Approach for one of those exposure classes, it shall do so for all the exposures within that exposure class, unless it has received the permission of the competent authorities to use the Standardised Approach permanently in accordance with Article 150.

Subject to the prior permission of the competent authorities, implementation of the IRB Approach may be carried out sequentially across the different types of exposures within the same exposure class and within the same business unit, and across different business units in the same group, or for the use of own estimates of LGDs or IRB-CCFs.

2. Competent authorities shall determine the time period over which an institution and any parent undertaking and its subsidiaries shall be required to implement the IRB Approach for all exposures within one exposure class across different business units in the same group or for the use of own estimates of LGDs or IRB-CCFs. That time period shall be one that competent authorities consider to be appropriate on the

basis of the nature and scale of the activities of the institution concerned, or any parent undertaking and its subsidiaries, and the number and nature of rating systems to be implemented.';

(b) paragraphs 4, 5 and 6 are deleted;

(63) Article 150 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Institutions shall apply the Standardised Approach for all the following exposures:

(a) exposures assigned to the equity exposure class referred to in Article 147(2), point (e);

(b) exposures assigned to exposure classes for which institutions have decided not to implement the IRB Approach for the calculation of the risk-weighted exposure amounts and expected loss amounts;

(c) exposures for which institutions have not received the prior permission of the competent authorities to use the IRB Approach for the calculation of the risk-weighted exposure amounts and expected loss amounts.

An institution that is permitted to use the IRB Approach for the calculation of risk-weighted exposure amounts and expected loss amounts for a given exposure class may, subject to the competent authority's prior permission, apply the Standardised Approach for some types of exposures within that exposure class where those types of exposures are immaterial in terms of size and perceived risk profile.

An institution that is permitted to use the IRB Approach for the calculation of risk-weighted exposure amounts for only some types of exposures within an exposure class, shall apply the Standardised Approach for the remaining types of exposures within that exposure class.';

(b) paragraphs 2, 3 and 4 are deleted;

(64) Article 151 is amended as follows:

(a) paragraph 4 is deleted;

(b) paragraph 7, 8 and 9 are replaced by the following:

'7. For retail exposures, institutions shall provide own estimates of LGDs, and IRB-CCF where applicable pursuant to Article 166, paragraphs 8 and 8b, in accordance with Article 143 and Section 6. Institutions shall use SA-CCF where Article 166, paragraphs 8 and 8b do not allow for the use of IRB-CCF.

8. For the following exposures, institutions shall apply the LGD values set out in Article 161(1) and SA-CCF in accordance with Article 166, paragraphs 8, 8a and 8b:

(a) exposures assigned to the exposure class 'exposures to institutions' referred to in Article 147(2), point (b);

(b) exposures to financial sector entities;

(c) exposures to large corporates.

For exposures belonging to the exposure classes referred to in Article 147(2), points (a), (a1) and (c), except for the exposures referred to in the first subparagraph of this paragraph, institutions shall apply the LGD values set out in Article 161(1), and the SA-CCF in accordance with Article 166, paragraphs 8, 8a and 8b, unless they have been permitted to use their own estimates of LGDs and CCFs for those exposures in accordance with paragraph 9 of this Article.

9. For the exposures referred to in paragraph 8, second subparagraph the competent authority shall permit institutions to use own estimates of LGDs, and IRB-CCFs where applicable pursuant to Article 166, paragraphs 8 and 8b, in accordance with Article 143 and Section 6.';

(c) the following paragraphs 11, 12 and 13 are added:

'11. Institutions shall apply the requirements laid down for exposures belonging to the exposure class 'general corporates' referred to in Article 147(2), point (c)(i) to exposures belonging to the exposure class 'RGLA-PSE' referred to in Article 147(2), point (a1). For the purposes of this paragraph, the threshold provided in the definition of large corporate and the provisions applicable to large corporates set out in paragraph 8, first subparagraph, point (c) shall not apply, and the treatment set out in Article 501 shall not apply.

12. For exposures in the form of shares or units in a CIU belonging to the exposure class referred to in Article 147(2), point (e1), institutions shall apply the treatment set out in Article 152.

13. EBA shall develop draft regulatory technical standards to specify the treatment applicable to exposures belonging to the exposure class 'corporates purchased receivables' referred to in Article 147(2), point (c)(iii) and the exposure class 'retail purchased receivables' referred to in Article 147(2), point (d)(iii), for the purposes of calculating risk-weighted exposure amounts for the default risk and for the dilution risk of those exposures, including for the recognition of credit risk mitigation techniques.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2025.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.';

(65) in Article 152, paragraph 4 is replaced by the following:

'4. Institutions that apply the look-through approach in accordance with paragraphs 2 and 3 of this Article and that do not use the methods set out in this Chapter or in Chapter 5 as applicable for all or parts of the underlying exposures of the CIU, shall calculate risk-weighted exposure amounts and expected loss amounts in accordance with the following principles:

(a) for underlying exposures that would be assigned to the equity exposure class referred to in Article 147(2), point (e), institutions shall apply the Standardised Approach laid down in Chapter 2;

(b) for exposures assigned to the items representing securitisation positions referred to in Article 147(2), point (f), institutions shall apply the treatment set out in Article 254 as if those exposures were directly held by those institutions;

(c) for all other underlying exposures, institutions shall apply the Standardised Approach laid down in Chapter 2.';

(66) Article 153 is amended as follows:

(a) paragraph 1, point (iii) is replaced by the following:

'(iii) if 0 < PD < 1, then:

$$\mathrm{RW} = \left(\mathrm{LGD} \cdot N\left(\frac{1}{\sqrt{1-R}} \cdot G(\mathrm{PD}) + \sqrt{\frac{R}{1-R}} \cdot G(0{,}999) \right) - \mathrm{LGD} \cdot \mathrm{PD} \right) \cdot \frac{1 + (\mathrm{M} - 2{,}5) \cdot b}{1 - 1{,}5 \cdot b} \cdot 12{,}5$$

where:

N = the cumulative distribution function for a standard normal random variable, i.e. $N(x)$ equals the probability that a normal random variable with mean of 0 and variance of 1, is less than or equal to x;

G = the inverse cumulative distribution function for a standard normal random variable, i.e. if $x = G(z)$, x is the value such that $N(x) = z$;

R = the coefficient of correlation, which is defined as:

$$R = 0{,}12 \cdot \frac{1 - e^{-50 \cdot \mathrm{PD}}}{1 - e^{-50}} + 0{,}24 \cdot \left(1 - \frac{1 - e^{-50 \cdot \mathrm{PD}}}{1 - e^{-50}}\right)$$

b = the maturity adjustment factor, which is defined as:

$$b = [0{,}11852 - 0{,}05478 \cdot ln(\mathrm{PD})]^2$$

M = the maturity and shall beexpressed in years and calculated in accordance with Article 162.';

(b) paragraph 2 is replaced by the following:

'2. For exposures to large regulated financial sector entities and to unregulated financial sector entities, the coefficient of correlation R provided in paragraph 1, point (iii), or paragraph 4 as applicable, shall be multiplied by 1,25 when calculating the risk weights of those exposures.';

(c) paragraph 3 is deleted;

(d) paragraph 9 is replaced by the following:

'9. EBA shall develop draft regulatory technical standards to specify how institutions shall take into account the factors referred to in paragraph 5, second subparagraph, when assigning risk weights to specialised lending exposures.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2025.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.';

(67) Article 154 is amended as follows:

(a) in paragraph 1, point (ii) is replaced by the following:

'(ii) if PD < 1, then:

$$\mathrm{RW} = \left(\mathrm{LGD} \cdot N\left(\frac{1}{\sqrt{1-R}} \cdot G(\mathrm{PD}) + \sqrt{\frac{R}{1-R}} \cdot G(0{,}999) \right) - \mathrm{LGD} \cdot \mathrm{PD} \right) \cdot 12{,}5$$

where:

N = the cumulative distribution function for a standard normal random variable, i.e. $N(x)$ equals to the probability that a normal random variable with mean of 0 and variance of 1, is less than or equal to x;

G = the inverse cumulative distribution function for a standard normal random variable, i.e. if $x = G(z)$, x is the value such that $N(x) = z$;

R = the coefficient of correlation, which is defined as:

$$R = 0{,}03 \cdot \frac{1-e^{-35 \cdot \mathrm{PD}}}{1-e^{-35}} + 0{,}16 \cdot \left(1 - \frac{1-e^{-35 \cdot \mathrm{PD}}}{1-e^{-35}}\right)$$

';

(b) paragraph 2 is deleted;

(c) paragraph 3 is replaced by the following:

'3. For retail exposures that are not in default and are secured or partly secured by residential property, a coefficient of correlation R of 0,15 shall replace the figure produced by the coefficient of correlation formula in paragraph 1.

The risk-weight applicable pursuant to paragraph 1, point (ii), to an exposure partly secured by residential property shall also apply to the unsecured portion of the underlying exposure.';

(d) paragraph 4 is replaced by the following:

'4. For QRREs that are not in default, a coefficient of correlation R of 0,04 shall replace the figure produced by the coefficient of correlation formula in paragraph 1.

Competent authorities shall review the relative volatility of loss rates across QRREs belonging to the same type of exposures, as well as across the aggregate QRRE exposure class, and shall share information on the typical characteristics of qualifying revolving retail loss rates across Member States and with EBA.';

(68) Article 155 is deleted;

(69) in Article 157, the following paragraph 6 is added:

'6. EBA shall develop draft regulatory technical standards to specify further:

(a) the methodology for the calculation of risk-weighted exposure amount for dilution risk of purchased receivables, including recognition of CRM techniques in accordance with Article 160(4), and the conditions for the use of own estimates and fall-back parameters;

(b) the assessment of the immateriality criterion for the type of exposures referred to in paragraph 5;

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2026.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.';

(70) Article 158 is amended as follows:

(a) in paragraph 5, the last subparagraph is deleted;

(b) paragraphs 7, 8 and 9 are deleted.

(71) Article 159 is replaced by the following:

'Article 159

Treatment of expected loss amounts, IRB shortfall and IRB excess

Institutions shall subtract the expected loss amounts of exposures referred to in Article 158, paragraphs 5, 6 and 10 from the sum of all of the following:

(a) the general and specific credit risk adjustments related to those exposures, calculated in accordance with Article 110;

(b) additional value adjustments related to the non-trading book business of the institution determined in accordance with Articles 34, related to those exposures;

(c) other own funds reductions related to those exposures other than the deductions made in accordance with Article 36(1), point (m).

Where the calculation performed in accordance with the first subparagraph results in a positive amount, the amount obtained shall be called 'IRB excess'. Where the calculation performed in accordance with the first subparagraph results in a negative amount, the amount obtained shall be called 'IRB shortfall'.

For the purposes of the calculation referred to in the first subparagraph, institutions shall treat discounts or premiums determined in accordance with Article 166(1) on balance sheet exposures purchased when in default in the same manner as specific credit risk adjustments. Discounts or premiums on balance sheet exposures purchased when not in default shall not be allowed to be included in the calculation of the IRB shortfall or IRB excess. Specific credit risk adjustments on exposures in default shall not be used to cover expected loss amounts on other exposures. Expected loss amounts for securitised exposures and general and specific credit risk adjustments related to those exposures shall not be included in the calculation of the IRB shortfall or IRB excess.';

(72) in Section 4, the following Sub-Section 0 is inserted:

‘Sub-Section 0
Exposures covered by guarantees provided by Member States’ central governments and central banks or the ECB

Article 159a
Non application of PD and LGD input floors

For the purposes of Chapter 3, and in particular with regard to Articles 160(1), 161(4), 164(4) and 166(8c), where an exposure is covered by an eligible guarantee provided by a Member State’s central government or central bank or by the ECB, the PD, LGD and CCF input floors shall not apply to the part of the exposure covered by that guarantee. However, the part of the exposure that is not covered by that guarantee shall be subject to the PD, LGD and CCF input floors concerned.’;

(73) Article 160 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. For exposures assigned to the exposure class ‘exposures to institutions’ referred to in Article 147(2), point (b), or ‘exposures to corporates’ referred to in Article 147(2), point (c), for the sole purposes of calculating risk weighted exposures and expected losses amounts of those exposures, in particular for the purposes of Article 153, Article 157, Article 158(1), Article 158(5) and Article 158(10), the PD values used in the input of the risk weights and expected loss formulas shall not be less than the following value: 0,05 % (‘PD input floor’).’;

(b) paragraph 4 is replaced by the following:

‘4. For an exposure covered by an UFCP, an institution using own LGD estimates under Article 143 for both the original exposure and for direct comparable exposures to the protection provider may recognise the unfunded credit protection in the PD in accordance with Article 183.’;

(c) paragraph 5 is deleted;

(d) paragraph 6 is replaced by the following:

‘6. For dilution risk of purchased corporate receivables, PD shall be set equal to the EL estimate of the institution for dilution risk. An institution that has received permission from the competent authority pursuant to Article 143 to use own LGD estimates for corporate exposures that can decompose its EL estimates for dilution risk of purchased corporate receivables into PDs and LGDs in a manner that the competent authority considers to be reliable, may use the PD estimate that results from this decomposition. Institutions may recognise unfunded credit protection in the PD in accordance with Chapter 4.’;

(e) paragraph 7 is replaced by the following:

‘7. An institution that has received the permission of the competent authority pursuant to Article 143 to use own LGD estimates for dilution risk of purchased corporate receivables, may recognise unfunded credit protection by adjusting PDs subject to Article 161(3).’;

(74) Article 161 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (a) is replaced by the following:

‘(a) senior exposures without FCP to central governments and central banks and financial sector entities: 45 %;’;

(ii) the following point (aa) is inserted:

‘(aa) senior exposures without FCP, to corporates which are not financial sector entities: 40 %;’;

(iii) point (c) is deleted;

(iv) point (e) is replaced by the following:

‘(e) for senior purchased corporate receivables exposures where an institution is not able to estimate PDs or where the institution's PD estimates do not meet the requirements set out in Section 6: 40 %;’;

(v) point (g) is replaced by the following

‘(g) for dilution risk of purchased corporate receivables: 100 %.’;

(b) paragraph 3 and 4 are replaced by the following:

‘3. For an exposure covered by an unfunded credit protection, an institution using own LGD estimates pursuant to Article 143 for both the original exposure and for direct comparable exposures to the protection provider may recognise the unfunded credit protection in the LGD in accordance with Article 183.

4. For exposures assigned to the exposure class ‘corporates exposure class’ referred to in Article 147(2), point (c), for the sole purpose of calculating risk weighted exposures and expected losses amounts of those exposures, and in particular for the purposes of Article 153(1), point (iii), Article 157, Article 158, paragraphs 1, 5 and 10, where own LGD estimates are used, the LGD values used in input of the risk weight and expect loss formulas shall not be less than the following LGD input floor values, and calculated in accordance with paragraph 5:

Table 2a

LGD input floors (LGD_{floor}) for exposures belonging to the exposure class ‘exposure to corporates’		
exposure without FCP ($LGD_{U\text{-}floor}$)	exposure fully secured by FCP ($LGD_{S\text{-}floor}$)	
25 %	financial collateral	0 %
	receivables	10 %
	residential or commercial immovable property	10 %
	other physical	15 %

	collateral	

;’;

(c) the following paragraph 5 and 6 are added:

‘5. For the purposes of paragraph 4, the LGD input floors in Table 2a in that paragraph for exposures fully secured with FCP shall apply when the value of the FCP, after the application of the volatility adjustments H_c and H_{fx} concerned in accordance with Article 230, is equal to or exceeds the value of the underlying exposure. In addition, those values shall be applicable for FCP eligible pursuant to this Chapter.

The applicable LGD input floor (LGD_{floor}) for an exposure partially secured with FCP is calculated as the weighted average of $LGD_{U\text{-}floor}$ for the portion of the exposure without FCP and $LGD_{S\text{-}floor}$ for the fully secured portion, as follows:

$$LGD_{floor} = LGD_{U\text{-}floor} \cdot \frac{E_U}{\mathrm{E} \cdot (1 + H_E)} + LGD_{S\text{-}floor} \cdot \frac{E_S}{\mathrm{E} \cdot (1 + H_E)}$$

where:

$LGD_{U\text{-}floor}$ and $LGD_{S\text{-}floor}$ are the relevant floor values of Table 1;

E , E_S , E_U and H_E are determined as specified in Article 230.

6. Where an institution that uses own LGD estimates for a given type of corporate unsecured exposures is not able to take into account the effect of the FCP securing one of the exposures of that type of exposures in the own LGD estimates, the institution shall be permitted to apply the formula set out in Article 230, with the exception that the LGD_U term in that formula shall be the institution’s own LGD estimate. In that case, the FCP shall be eligible in accordance with Chapter 4 and the institution’s own LGD estimate used as LGD_U term shall be calculated based on underlying losses data excluding any recoveries arising from that FCP.’;

(75) Article 162 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. For exposures for which an institution has not received permission of the competent authority to use own estimates of LGD, the maturity value (‘M’) shall be 2,5 years, except for exposures arising from securities financing transactions, for which M shall be 0,5 years.

Alternatively, as part of the permission referred to in Article 143, the competent authorities may decide on whether the institution shall use the maturity value M as set out in paragraph 2 for all those exposures of for a subset of those exposures.’;

(b) paragraph 2 is amended as follows:

(i) the introductory phrase in paragraph 2 is replaced by the following:

‘For exposures for which an institution applies own estimates of LGD, the maturity value (‘M’) shall be calculated using periods of times expressed in years, as set out in this paragraph and subject to paragraphs 3 to 5 of this Article. M shall be no greater than 5 years, except in the cases specified in Article 384(1) where M as specified there shall be used. M shall be calculated as follows in each of the following cases:';

(ii) the following points (da) and (db) are inserted:

'(da) for secured lending transactions which are subject to a master netting agreement, M shall be the weighted average remaining maturity of the transactions where M shall be at least 20 days. The notional amount of each transaction shall be used for weighting the maturity;

(db) for a master netting agreement including more than one transaction types corresponding to points (c), (d) or (da), M shall be the weighted average remaining maturity of the transactions where M shall be at least the longest holding period (expressed in years) to such transactions as provided in Article 224(2) (either 10 days or 20 days, depending on the cases). The notional amount of each transaction shall be used for weighting the maturity';

(iii) point (f) is replaced by the following:

'(f) for any instrument other than those referred to in this paragraph or when an institution is not in a position to calculate M as set out in point (a), M shall be the maximum remaining time (in years) that the obligor is permitted to take to fully discharge its contractual obligations (principal, interest, and fees), where M shall be at least one year;';

(iv) point (i) is replaced by the following:

'(i) for institutions using the approaches referred to in Article 382a(1), points (a) or (b), to calculate own fund requirement for CVA risks of transactions with a given counterparty, M shall be no greater than 1 in the formula laid out in Article 153(1) for the purposes of calculating the risk weighted exposure amounts for counterparty risk for the same transactions, as referred to in Article 92(4), points (a) or (f), as applicable;';

(v) point (j) is replaced by the following:

'(j) For revolving exposures, M shall be determined using the maximum contractual termination date of the facility. Institutions shall not use the repayment date of the current drawing if this date is not the maximum termination date of the facility.';

(c) paragraph 3 is amended as follows:

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

'Where the documentation requires daily re-margining and daily revaluation and includes provisions that allow for the prompt liquidation or set off of collateral in the event of default or failure to remargin, M shall be the weighted average remaining maturity of the transactions and M shall be at least one day:';

(ii) the second subparagraph is amended as follows:

– point (b) is replaced by the following:

‘(b) self-liquidating short-term trade finance transactions connected to the exchange of goods or services, including corporate purchased receivables, with a residual maturity of up to 1 year as referred to in Article 4(1), point (80);’;

– the following point (e) is added:

‘(e) issued as well as confirmed letters of credit that are short term that is with a maturity below 1 year, and are self-liquidating.’;

(d) paragraph 4 is replaced by the following:

‘4. For exposures to corporates established in the Union which are not large corporates, institutions may choose to set for all such exposures M as set out in paragraph 1 instead of applying paragraph 2.’;

(e) the following new paragraph 6 is added:

‘6. For the purposes of expressing in years the minimum numbers of days referred to in paragraph 2, points (c) to (db), and paragraph 3, the minimum numbers of days shall be divided by 365,25.’;

(76) Article 163 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. For the sole purposes of calculating risk weighted exposures and expected losses amounts of those exposures, and in particular for the purposes of Article 154, Article 157 and Article 158, paragraphs 1, 5 and 10, the PD values used in the input of the risk weight and expected loss formulas shall not be less than the following:

(a) 0,1 % for QRRE revolvers;

(b) 0,05 % for retail exposures which are not QRRE revolvers.’;

(b) paragraph 4 is replaced by the following:

‘4. For an exposure covered by an unfunded credit protection, an institution using own LGD estimates under Article 143 for direct comparable exposures to the protection provider may recognise the unfunded credit protection in the PD in accordance with Article 183.’;

(77) Article 164 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

‘1. Institutions shall provide own estimates of LGDs subject to the requirements specified in Section 6 of this Chapter and to permission of the competent authorities granted in accordance with Article 143. For dilution risk of purchased receivables, an LGD value of 100 % shall be used. Where an institution can decompose its expected loss estimates for dilution risk of purchased receivables into PDs and LGDs in a reliable manner, the institution may use its own LGD estimate.

2. Institutions using own LGD estimates pursuant to Article 143 for direct comparable exposures to the protection provider may recognise the unfunded credit protection in the LGD in accordance with Article 183.’;

(b) paragraph 3 is deleted;

(c) paragraph 4 is replaced by the following:

‘4. For the sole purpose of calculating risk weighted exposures and expected losses amounts for retail exposures, and in particular pursuant to Article 154(1), Articles 157, Article 158, paragraphs 1 and 10, the LGD used in input of the risk weight and expected loss formulas shall not be less than the LGD input floor values laid down in Table 2aa and in accordance with paragraphs 4a and 4b:

Table 2aa

<table>
<tr><td colspan="4">LGD input floors (LGD_{floor}) for retail exposures</td></tr>
<tr><td colspan="2">exposure without FCP ($LGD_{U\text{-}floor}$)</td><td colspan="2">exposure secured with FCP ($LGD_{S\text{-}floor}$)</td></tr>
<tr><td>Retail exposure secured by residential property</td><td>N/A</td><td>Retail exposure secured by residential property</td><td>5 %</td></tr>
<tr><td>QRRE</td><td>50 %</td><td>QRRE</td><td>N/A</td></tr>
<tr><td rowspan="5">Other retail exposure</td><td rowspan="5">30 %</td><td>Other retail exposure secured with financial collateral</td><td>0 %</td></tr>
<tr><td>Other retail exposure secured with receivables</td><td>10 %</td></tr>
<tr><td>Other retail exposure secured with residential or commercial immovable property</td><td>10 %</td></tr>
<tr><td>Other retail exposure secured with other physical collateral</td><td>15 %</td></tr>
<tr><td></td><td></td></tr>
</table>

’;

(d) the following paragraphs 4a and 4b are inserted:

‘4a. For the purposes of paragraph 4, the following shall apply:

(a) LGD input floors in paragraph 4, Table 2aa shall be applicable for exposures secured with FCP when the FCP is eligible pursuant to this Chapter;

(b) except for retail exposures secured by residential property, the LGD input floors in paragraph 4, Table 2aa shall be applicable to exposures fully secured with FCP where the value of the FCP, after the application of the relevant volatility adjustments in accordance with Article 230, is equal to or exceeds the value of the underlying exposure;

(c) except for retail exposures secured by residential property, the applicable LGD input floor for an exposure partially secured with FCP is calculated in accordance with the formula laid down in Article 161(5);

(d) for retail exposures secured by residential property, the applicable LGD input floor shall be fixed at 5 % irrespective of the level of collateral provided by the residential property.

4b. Where an institution is not able to recognise the effects of the FCP securing one of the exposures of that type of exposures in the own LGD estimates, the institution shall be permitted to apply the formula set out in Article 230, with the exception that the LGDU term in that formula shall be the institution’s own LGD estimate. In that case, the FCP shall be eligible in accordance with Chapter 4 and the institution own LGD estimate used as LGDU term shall be calculated based on underlying losses data excluding any recoveries arising from that FCP.’;

(78) Part Three, Title II, Chapter 3, Section 4, Sub-Section 3 is deleted.;

(79) Article 166 is amended as follows:

(a) paragraph 8 is replaced by the following:

‘8. The exposure value of off-balance sheet items which are not contracts as listed in Annex II, shall be calculated by using either using IRB-CCF or SA-CCF, in accordance with paragraphs 8a and 8b and Article 151(8).

Where the drawn balances of revolving facilities have been securitised, institutions shall ensure that they continue to hold the required amount of own funds against the undrawn balances associated with the securitisation.

An institution that does not use IRB-CCF, shall calculate the exposure value as the committed but undrawn amount multiplied by the SA-CCF concerned.

An institution that does not use IRB-CCF, shall calculate the exposure value for undrawn commitments as the undrawn amount multiplied by an IRB-CCF.’;

(b) the following paragraphs 8a, 8b and 8c are inserted:

8a. For an exposure for which the IRB-CCF is not used, the applicable CCF shall be the SA-CCF as provided under Chapter 2 for the same types of items as laid down in Article 111. The amount to which the SA-CCF shall be applied shall be the lower of the value of the unused committed credit line, and the value that reflects any possible constraining of the availability of the facility, including the existence of an upper limit on the potential lending amount which is related to an obligor's reported cash flow. Where a facility is constrained in that way, the institution shall have sufficient line monitoring and management procedures to support the existence of that constraining.

8b. Subject to the permission of competent authorities, institutions that meet the requirements for the use of IRB-CCF as specified in Section 6 shall use IRB-CCF for exposures arising from undrawn revolving commitments treated under the IRB Approach provided that those exposures would not be subject to a SA-CCF of 100 % under the Standardised Approach. SA-CCF shall be used for:

(a) all other off-balance sheet items, in particular undrawn non-revolving commitments;

(b) exposures where the minimum requirements for calculating IRB-CCF as specified in Section 6 are not met by the institution or where the competent authority has not permitted the use of IRB-CCFs.

For the purposes of this Article, a commitment shall be deemed 'revolving' where it lets an obligor obtain a loan where the obligor has the flexibility to decide how often to withdraw from the loan and at what time intervals, allowing the obligor to drawdown, repay and re-draw loans advanced to it. Contractual arrangements that allow prepayments and subsequent redraws of those prepayments shall be considered as revolving.

8c. For the sole purposes of calculating risk weighted exposures and expected losses amounts of exposures arising from revolving commitments where IRB-CCF are used, in particular pursuant to Article 153(1), Article 157, Article 158 paragraph 1, 5 and 10, the exposure value used as input in the risk weighted exposure amount and expect loss formulas shall not be less that then the sum of:

(a) the drawn amount of the revolving commitment;

(b) 50 % of the off-balance exposure amount of the remaining undrawn part of the revolving commitment calculated using the applicable SA-CCF provided for in Article 111.

The sum of points (a) and (b) shall be referred to as the 'CCF input floor'.';

(c) paragraph 10 is deleted;

(80) Article 167 is deleted;

(81) in Article 169(3), the following subparagraph is added:

'EBA shall issue guidelines on how to apply in practice the requirements on model design, risk quantification, validation and application of risk parameters using continuous or very granular rating scales for each risk parameter. Those guidelines shall be adopted in accordance with Article 16 of Regulation (EU) No 1093/2010.';

(82) in Article 170(4), point (b) is replaced by the following:

'(b) transaction risk characteristics, including product and funded credit protection, recognised unfunded credit protection, loan to value measures, seasoning and seniority. Institutions shall explicitly address cases where several exposures benefit from the same collateral. For each pool where the institution estimates PD and LGD, the institution shall analyse the representativeness of the age of the facilities in terms of time since origination for PD and time since the date of default for LGD, in the data used to derive the estimates of the institution's actual facilities;';

(83) in Article 171, the following paragraph 3 is added:

'3. Rating systems shall be designed in such a way that idiosyncratic or industry-specific changes are a driver of migrations from one grade to another. In addition, business cycles effects shall be taken into account as a driver for migrations of obligors and facilities from one grade or pool to another.';

(84) in Article 172, paragraph 1 is amended as follows:

(a) the introductory sentence is replaced by the following:

'For exposures to corporates, institutions and central governments and central banks, assignment of exposures shall be carried out in accordance with the following criteria:';

(b) point (d) is replaced by the following:

'(d) each separate legal entity to which the institution is exposed shall be separately rated;';

(c) the following subparagraph is added:

'For the purposes of point (d), an institution shall have appropriate policies for the treatment of individual obligor clients and groups of connected clients. Those policies shall contain a process for the identification of specific wrong way risk for each legal entity to which the institution is exposed. Transactions with counterparties where specific wrong way risk has been identified shall be treated differently when calculating their exposure value;';

(85) Article 173 is amended as follows:

(a) in paragraph 1, the introductory sentence is replaced by the following:

'For exposures to corporates, institutions and central governments and central banks, assignment process shall meet the following requirements:';

(b) paragraph 3 is replaced by the following:

'3. EBA shall develop draft regulatory technical standards setting out the methodologies of the competent authorities to assess the integrity of the assignment process and the regular and independent assessment of risks.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2025.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.';

(86) Article 174 is amended as follows:

(a) the introductory sentence is replaced by the following:

'Institutions shall use statistical other mathematical methods ('models') to assign exposures to obligors or facilities grades or pools, for which the following requirements shall be met:';

(b) point (a) is replaced by the following:

‘(a) the model shall have good predictive power and capital requirements shall not be distorted as a result of its use;’;

(c) the following subparagraph is added:

‘For the purposes of point (a), the input variables shall form a reasonable and effective basis for the resulting predictions. The model shall not have material biases. There shall be a functional link between the inputs and the outputs of the model, which may be determined through expert judgement where appropriate.’;

(87) Article 176 is amended as follows:

(a) in paragraph 2, the introductory sentence is replaced by the following:

‘For exposures to corporates, institutions and central governments and central banks, institutions shall collect and store:’;

(b) paragraph 3 is replaced by the following:

‘3. For exposures for which this Chapter allows the calculation of own estimates of LGDs or IRB-CCFs but for which institutions do not use own estimates of LGDs or IRB-CCFs, institutions shall collect and store data on comparisons between realised LGDs and the values as set out in Article 161(1), and between realised CCFs and SA-CCFs as set out in Article 166(8a).’;

(88) in Article 177, paragraph 3 is deleted;

(89) Article 178 is amended as follows:

(a) the title is replaced by the following:

‘Default of an obligor or facility’

(b) in paragraph 1, point (b) is replaced by the following:

‘(b) the obligor is more than 90 days past due on any material credit obligation to the institution, the parent undertaking or any of its subsidiaries.’;

(c) in paragraph 3, point (d) is replaced by the following:

‘(d) the institution consents to a distressed restructuring of the credit obligation where such restructuring is likely to result in a diminished financial obligation due to the material forgiveness, or postponement, of principal, interest or, where relevant, fees. A distressed restructuring shall be considered to have occurred when forbearance measures as referred to in Article 47b have been extended toward the obligor;’;

(90) Article 180 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the introductory sentence is replaced by the following:

‘In quantifying the risk parameters to be associated with rating grades or pools, institutions shall apply the following requirements specific to PD estimation to exposures to corporates, institutions and central governments and central banks:’;

(ii) point (h) is replaced by the following:

‘(h) irrespective of whether an institution is using external, internal, or pooled data sources, or a combination of the three, for its PD estimation, the length of the underlying historical observation period used shall be at least five years for at least one source.’;

(iii) the following point (i) is added:

‘(i) irrespective of the method used to estimate PD, institutions shall estimate a PD for each rating grade based on the observed historical average one-year default rate that is a simple average based on number of obligors (count weighted) and other approaches, including exposure-weighted averages, shall not be permitted.’;

(iv) the following subparagraph is added:

‘For the purposes of point (h), where the available observation period spans a longer period for any source, and this data is relevant, this longer period shall be used. The data shall include a representative mix of good and bad years relevant for the type of exposures. Subject to the permission of competent authorities, institutions which have not received the permission of the competent authority pursuant to Article 143 to use own estimates of LGDs or conversion factors may use, when they implement the IRB Approach, relevant data covering a period of two years. The period to be covered shall increase by one year each year until relevant data cover a period of five years.’;

(b) paragraph 2 is amended as follows:

(i) point (a) is replaced by the following:

‘(a) institutions shall estimate PDs by obligor or facility grade or pool from long run averages of one-year default rates, and default rates shall be calculated at facility level only where the definition of default is applied at individual credit facility level pursuant to Article 178(1), second subparagraph;’

(ii) point (e) is replaced by the following:

‘(e) irrespective of whether an institution is using external, internal or pooled data sources, or a combination of the three, for its PD estimation, the length of the underlying historical observation period used shall be at least five years for at least one source.’;

(iii) the following subparagraph is added:

‘For the purposes of point (e), where the available observation spans a longer period for any source, and where those data are relevant, such longer period shall be used. The data shall contain a representative mix of good and bad years of the economic cycle relevant for the type of exposures. The PD shall be based on the observed historical average one-year default rate. Subject to the permission of the competent authorities, institutions may use, when they implement the IRB Approach, relevant data covering a period of two years. The period to be covered shall increase by one year each year until relevant data cover a period of five years.’;

(c) paragraph 3 is replaced by the following:

‘EBA shall develop draft regulatory technical standards to specify the methodologies in accordance with which competent authorities shall assess the methodology of an institution for estimating PD pursuant to Article 143.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2025.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.’;

(91) Article 181 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) points (c) to (g) are replaced by the following:

‘(c) an institution shall consider the extent of any dependence between, on the one hand, the risk of the obligor and, on the other hand, that of funded credit protection, other than master netting agreements and on-balance sheet netting of loans and deposits, or its provider.;

(d) currency mismatches between the underlying obligation and the funded credit protection other than master netting agreements and on-balance sheet netting of loans and deposits shall be treated conservatively in the institution's assessment of LGD;’

(e) to the extent that LGD estimates take into account the existence of funded credit protection other than master netting agreements and on-balance sheet netting of loans and deposits, those estimates shall not solely be based on the estimated market value of the funded credit protection.;

(f) to the extent that LGD estimates take into account the existence of funded credit protection other than master netting agreements and on-balance sheet netting of loans and deposits, institutions shall establish internal requirements for the management, legal certainty and risk management of that funded credit protection, and those requirements shall be generally consistent with those set out in Chapter 4, Section 3;

(g) to the extent that an institution recognises funded credit protection other than master netting agreements and on-balance sheet netting of loans and deposits for determining the exposure value for counterparty credit risk in accordance with Chapter 6, Section 5 or 6, any amount expected to be recovered from this funded credit protection shall not be taken into account in the LGD estimates;’;

(ii) point (i) is replaced by the following:

‘(i) to the extent that fees for late payments, imposed on the obligor before the time of default, have been capitalised in the institution's income statement, they shall be added to the institution's measure of exposure and loss;’;

(iii) the following point (k) is added:

‘(k) additional drawings after default shall be accounted for in the LGD;’;

(iv) the following subparagraphs are added:

‘For the purposes of point (a), institutions shall adequately take into account recoveries realised in the course of the relevant recovery processes from any form of FCP as well as from UFCP not falling under the definition of Article 142, point (10).

For the purposes of point (c), cases where there is a significant degree of dependence shall be addressed in a conservative manner.

For the purposes of point (e), LGD estimates shall take into account the effect of the potential inability of institutions to expeditiously gain control of their collateral and liquidate it.’;

(b) paragraph 2 is amended as follows:

(i) in the first subparagraph, point (b) is deleted;

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

‘For retail exposures, estimates of LGD shall be based on data over a minimum of five years. Subject to the permission of the competent authorities, institutions may use, when they implement the IRB Approach, relevant data covering a period of two years. The period to be covered shall be increased by one year each year until the data concerned cover a period of five years.’;

(c) the following paragraph 4 is added:

‘4. EBA shall, in accordance with Article 16 of Regulation (EU) No 1093/2010, issue guidelines to clarify the treatment of any form of funded and unfunded credit protection for the purposes of paragraph 1, point (a), and for the purposes of the application of the LGD parameters;’;

(92) Article 182 is amended as follows:

(a) in paragraph 1 is amended as follows:

(i) point (c) is replaced by the following:

‘(c) institutions’ IRB-CCF shall reflect the possibility of additional drawings by the obligor up to the time a default event is triggered. The IRB-CCF shall incorporate a larger margin of conservatism where a stronger positive correlation can reasonably be expected between the default frequency and the magnitude of conversion factor;’;

(ii) the following points (g) and (h) are added:

‘(g) institutions’ IRB-CCF shall be developed using a 12-month fixed-horizon approach. For that purpose, for each observation in the reference data set, default outcomes shall be linked to relevant obligor and facility characteristics at a fixed reference date defined as 12 months prior to default day;

(h) institutions’ IRB-CCF shall be based on reference data that reflect the obligor, facility and bank management practice characteristics of the exposures to which the estimates are applied.

(iii) the following subparagraphs are added:

‘For the purposes of point (c), the IRB-CCF shall incorporate a larger margin of conservatism where a stronger positive correlation can reasonably be expected between the default frequency and the magnitude of the conversion factor.

For the purposes of point (g), for each observation in the reference data set, default outcomes shall be linked to relevant obligor and facility characteristics at a fixed reference date which shall be set as 12 months prior to default day.

For the purposes of point (h), IRB-CCF applied to particular exposures shall not be based on data that comingle the effects of disparate characteristics or data from exposures that exhibit different risk characteristics. IRB-CCF shall be based on appropriately homogenous segments. For that purpose, the following practices shall not be allowed:

(a) SME/mid-market underlying data being applied to larger corporate obligors;

(b) data from commitments with ‘small’ unused limit availability being applied to facilities with ‘large’ unused limit availability;

(c) data from delinquent obligors or blocked for further drawdowns at reference date being applied to obligors with no known delinquency or relevant restrictions;

(d) data that have been affected by changes in the obligors’ mix of borrowing and other credit-related products over the observation period unless those data have been effectively by removing the effects of the changes in the product mix.

For the purposes of the fourth subparagraph, point (d), institutions shall demonstrate to the competent authorities that they have a detailed understanding of the impact of changes in customer product mix on the exposures reference data sets and associated CCF estimates, and that the impact is immaterial or has been effectively mitigated within their estimation process. In that regard, the following shall not be deemed appropriate:

(a) setting floors to CCF or exposure values observations

(b) the use of obligor-level estimates that do not fully cover the relevant product transformation options or inappropriately combine products with very different characteristics,

(c) adjusting only material observations affected by product transformation,

(d) excluding observations affected by product profile transformation.’;

(b) in paragraph 3, the first subparagraph is deleted;

(c) the following paragraph 5 is added:

‘5. EBA shall, in accordance with Article 16 of Regulation (EU) No 1093/2010, issue guidelines to specify the methodology institutions shall apply to estimate IRB-CCF.

EBA shall submit those draft regulatory technical standards to the Commission by 31 December 2026.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.';

(93) Article 183 is amended as follows

(a) the title is replaced by the following:

'Requirements for assessing the effect of unfunded credit protection for exposures to corporates, central governments and central banks where own estimates of LGD are used and for retail exposures*';*

(b) paragraph 1 is amended as follows:

(i) point (c) is replaced by the following:

'(c) the guarantee shall be evidenced in writing, non-cancellable and non-changeable on the part of the guarantor, in force until the obligation is satisfied in full, to the extent of the amount and tenor of the guarantee, and legally enforceable against the guarantor in a jurisdiction where the guarantor has assets to attach and enforce a judgement;

(ii) the following points (d) and (e) are added:

'(d) the guarantee shall be unconditional.

(e) first-to-default credit derivatives may be recognised as eligible unfunded credit protection, but second-to-default or more generally nth-to-default credit derivatives shall not be recognised as eligible unfunded credit protection.';

(iii) the following subparagraph is added:

'For the purposes of point (d), an 'unconditional guarantee' means a guarantee where the credit protection contract does not contain any clause the fulfilment of which is outside the direct control of the lending institution and, that could prevent the guarantor from being obliged to pay out in a timely manner in the event that the original obligor fails to make any payments due. A clause in the credit protection contract providing that a faulty due diligence or fraud by the lending institution cancels or diminishes the extent of the guarantee offered by the guarantor shall not disqualify that guarantee from being considered as unconditional. Any credit protection contract which can, in the event of fraud of the obligor, be cancelled or of which the extent of credit protection can be diminished, shall not be considered as unconditional.

Guarantees where the payment by the guarantor is subject to the lending institution first having to pursue the obligor and that only cover losses remaining after the institutions has completed the workout process shall be considered as unconditional.';

(c) the following paragraph 1a is added:

'1a. Institutions may recognise unfunded credit protection by using either the PD/LGD modelling approach, in accordance with this Article and subject to the requirement set out in paragraph 4, or the substitution of risk parameters approach under A-IRB as referred to in Article 236a and subject to the eligibility requirements of Chapter 4. Institutions should have clear policies for assessing the effects of unfunded credit protection on risk parameters. The policies of the institutions shall be consistent with their internal risk management practices and shall reflect the requirements of this Article. Those policies shall clearly specify which of the specific methods described in this subparagraph are used for each rating system, and institutions shall apply those policies consistently over time.';

(d) paragraph 4 is replaced by the following:

'4. Where institutions recognise unfunded credit protection by the PD/LGD modelling approach, the covered portion of the underlying exposure shall not be assigned a risk weight which would be lower than the protection-provider-RW-floor. For that purpose, the protection-provider-RW-floor shall be calculated using the same PD, the same LGD and the same risk weight function as the ones used applicable to comparable direct exposure to the protection provider as referred to in Article 236a.';

(e) paragraph 6 is deleted;

(94) in Part Three, Title II, Chapter 3, Section 6, Sub-Section 4 is deleted;

(95) in Article 192, the following points (5) to (8) are added:

'(5) 'substitution of risk weight approach under SA' means the substitution, in accordance with Article 235, of the risk weight of the underlying exposure with the risk weight applicable under the Standardised Approach to a comparable direct exposure to the protection provider;

(6) 'substitution of risk weight approach under IRB' means the substitution, in accordance with Article 235a, of the risk weight of the underlying exposure with the risk weight applicable under the Standardised Approach to a comparable direct exposure to the protection provider;

(7) 'substitution of risk parameters approach under F-IRB' means the substitution, in accordance with Article 236, of both the PD and LGD risk parameters of the underlying exposure with the corresponding PD and LGD that would be assigned under the IRB approach without using own LGD estimates to a comparable direct exposures to the protection provider;

(8) 'substitution of risk parameters approach under A-IRB' means the substitution, in accordance with Article 236a, of both the PD and LGD risk parameters of the underlying exposure with the corresponding PD and LGD that would be assigned under the IRB approach using own LGD estimates to a comparable direct exposure to the protection provider.';

(96) in Article 193, the following paragraph 7 is added:

'7. Collateral that satisfies all eligibility requirements set out in this Chapter can be recognised as such even for exposures associated with undrawn facilities. Where drawing under the facility is conditional on the prior or simultaneous purchase or reception of collateral to the extent of the institution's interest in the collateral once the facility is drawn, such that the institution does not have any interest in the collateral to the extent the facility is not drawn, such collateral can be recognised for the exposure arising from the undrawn facility.';

(97) in Article 194, paragraph 10 is deleted;

(98) in Article 197, paragraph 1 is amended as follows:

(a) points (b) to (e) are replaced by the following:

‘(b) debt securities satisfying all of the following conditions:

(i) the debt securities are issued by central governments or central banks;

(ii) the debt securities have a credit assessment carried out by an ECAI or export credit agency that:

– has been recognised as being eligible for the purposes of Chapter 2;

– has been determined by EBA to be associated with credit quality step 1, 2, 3 or 4 under the rules for the risk weighting of exposures to central governments and central banks under Chapter 2;

(c) debt securities satisfying all of the following conditions:

(i) those debt securities are issued by institutions;

(ii) those debt securities have a credit assessment carried out by an ECAI that:

– has been recognised as being eligible for the purposes of Chapter 2;

– has been determined by EBA to be associated with credit quality step 1, 2 or 3 under the rules for the risk weighting of exposures to corporates under Chapter 2;

(d) debt securities satisfying all of the following conditions:

(i) those debt securities are issued by other entities;

(ii) those debt securities have a credit assessment carried out by an ECAI that satisfies all of the following conditions:

– the ECAI has been recognised as being eligible for the purposes of Chapter 2;

– the ECAI has been determined by EBA to be associated with credit quality step 1, 2 or 3 under the rules for the risk weighting of exposures to institutions under Chapter 2;

(e) debt securities having a short-term credit assessment carried out by an ECAI that satisfies all of the following conditions:

(i) the ECAI has been recognised as being eligible for the purposes of Chapter 2; and

(ii) the ECAI has been determined by EBA to be associated with credit quality step 1, 2 or 3 under the rules for the risk weighting of short-term exposures under Chapter 2;’;

(b) point (g) is replaced by the following:

‘(g) gold bullion;’;

(99) Article 199 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Unless otherwise specified under Article 124(7), institutions may use as eligible collateral residential property which is or will be occupied or let by the owner, or the beneficial owner in the case of personal investment companies, and commercial immovable property, including offices and other commercial premises, where both of the following conditions are met:

(a) the value of the property does not materially depend upon the credit quality of the obligor;

(b) the risk of the borrower does not materially depend upon the performance of the underlying property or project, but on the underlying capacity of the borrower to repay the debt from other sources, and as a consequence the repayment of the facility does not materially depend on any cash flow generated by the underlying property serving as collateral.

For the purposes of point (a), institutions may exclude situations where purely macro-economic factors affect both the value of the property and the performance of the borrower. ';

(b) in paragraph 3, point (a) is replaced by the following:

'(a) losses stemming from loans collateralised by residential property up to 55 % of the value determined in accordance with Article 229, unless otherwise provided under Article 124(7), do not exceed 0,3 % of the outstanding loans collateralised by residential property in any given year;';

(c) in paragraph 4, point (a) is replaced by the following:

'(a) losses stemming from loans collateralised by commercial property up to 55 % of the value determined in accordance with Article 229, unless otherwise provided under Article 124(7), do not exceed 0,3 % of the outstanding loans collateralised by commercial property in any given year;';

(d) in paragraph 5, the following subparagraph is added:

'Where a public development credit institution as defined in Article 429a(2) issues a promotional loan as defined in Article 429a(3) to another institution, or to a financial institution that is authorised to perform activities as referred to in points 2 or 3 of Annex I to Directive 2013/36/EU and that meets the conditions pursuant to Article 119(5) of this Regulation, and where that other institution or financial institution passes through directly or indirectly that promotional loan to an ultimate obligor and cedes the receivable from the promotional loan as collateral to the public development credit institution, the public development credit institution may use the ceded receivable as eligible collateral, regardless of the original maturity of the ceded receivable.';

(e) in paragraph 6, in the first subparagraph, point (d) is replaced by the following:

'(d) the institution demonstrates that in at least 90 % of all liquidations for a given type of collateral the realised proceeds from the collateral are not below 70 % of the collateral value. Where there is material volatility in the market prices, the institution demonstrates to the satisfaction of the competent authorities that its valuation of the collateral is sufficiently conservative.';

(100) Article 201 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (d) is replaced by the following:

‘ (d) international organisations to which a 0 % risk weight is assigned in accordance with in Article 118;’;

(ii) the following point (fa) is inserted:

‘(fa) regulated financial sector entities;’;

(iii) point (g) is replaced by the following:

‘(g) where the credit protection is not provided to a securitisation exposure, other undertakings, that have a credit assessment by an ECAI, including parent undertakings, subsidiaries or affiliated entities of the obligor where those parent undertakings, subsidiaries or affiliated entities have a lower risk weight than that of the obligor;’;

(iv) the following point (ga) is inserted:

‘(ga) where the credit protection is provided to a securitisation exposure, other undertakings, that have a credit assessment by an ECAI of credit quality step 1, 2 or 3 and that had a credit assessment of credit quality step 1 or 2 at the time the credit protection was provided, including parent undertakings, subsidiaries and affiliated entities of the obligor where those parent undertakings, subsidiaries or affiliated entitieshave a lower risk weight than that of the obligor;’;

(v) the following subparagraph is added:

‘For the purposes of point (fa), ‘regulated financial sector entity’ means a financial sector entity meeting the condition laid down in Article 142(1), point (4)(b).’;

(b) paragraph 2 is replaced by the following:

‘2. In addition to the protection providers listed in paragraph 1, corporate entities that are internally rated by the institution in accordance with Chapter 3, Section 6, shall be eligible protection providers of unfunded credit protection where the institution treats those corporate entities under the IRB Approach.’;

(101) Article 202 is deleted;

(102) in Article 204, the following paragraph 3 is added:

‘3. First-to-default and all other nth-to-default credit derivatives shall not be eligible forms of unfunded credit protection under this Chapter.

Risk-weighted exposures amounts shall be calculated for first-to-default credit derivatives. For that purpose, the risk-weights of the underlying assets included in the basket shall be aggregated up to a maximum of 1250 % and multiplied by the nominal amount of the protection provided by the credit derivative to obtain the risk-weighted exposure amount for the exposure related to that derivative.

For second-to-default credit derivatives, the treatment shall be identical, except that in aggregating the risk-weights, the underlying asset with the lowest risk-weighted exposure amount shall be excluded from the calculation. Such a treatment shall also apply for nth-to-default credit derivatives, for which the n-1 assets with the lowest risk-weighted exposure amounts shall be excluded from the calculation.’;

(103) Article 208 is amended as follows:

(a) paragraph 3 is amended as follows:

(i) in point (b), the following sentences are added:

'The value of the property shall not exceed the average value measured for that property or for a comparable property over the last three years in case of commercial immovable property, and over the last six years in case of residential property. Modifications made to the property that improve the energy efficiency of the building or housing unit shall be considered as unequivocally increasing its value.';

(ii) the second subparagraph is deleted;

(b) the following paragraph 3a is inserted:

'3a. In accordance with paragraph 3 and subject to the approval of the competent authorities, institutions may carry out the valuation and revaluation of the property value by means of advanced statistical or other mathematical methods ('models'), developed independently from the credit decision process, subject to the fulfilment of the following conditions:

(a) the institutions set out, in their policies and procedures, the criteria for using models to valuate, revaluate and monitor the values of collateral. Those policies and procedures shall account for such models' proven track record, property-specific variables considered, the use of minimum available and accurate information, and the models' uncertainty;

(b) the institutions ensure that the models used are:

(i) property and location specific at a sufficient level of granularity;

(ii) valid and accurate, and subject to robust and regular back-testing against the actual observed transaction prices;

(iii) based on a sufficiently large and representative sample, based on observed transaction prices;

(iv) based on up-to-date data of high quality;

(c) the institutions are ultimately responsible for the appropriateness and performance of the models, the valuer referred to in paragraph 3, point (b), is responsible for the valuation that is made using the models and the institutions understand the methodology, input data and assumptions of the models used;

(d) the institutions ensure that the documentation of the models is up to date;

(e) the institutions have in place adequate IT processes, systems and capabilities and have sufficient and accurate data for any model-based valuation or revaluation of collateral;

(f) the estimates of models are independently validated and the validation process is generally consistent with the principles set out in Article 185, and the independent valuer referred to in paragraph 3, point (b) is responsible for the final values used by the institution for the purposes of this Chapter.';

(c) paragraph 5 is replaced by the following:

‘5. The immovable property taken as credit protection shall be adequately insured against the risk of damage and institutions shall have in place procedures to monitor the adequacy of the insurance.’;

(104) in Article 210, the following subparagraph is added:

‘Where general security agreements, or other forms of floating charge, provide the lending institution with a registered claim over a company’s assets and where that claim contains both assets that are not eligible as collateral under the IRB Approach and assets that are eligible as collateral under the IRB Approach, the institution may recognise those latter assets as eligible funded credit protection. In that case, that recognition shall be conditional on those assets meeting the requirements for eligibility of collateral under the IRB Approach as set out in this Chapter.’;

(105) in Article 213, paragraph 1 is replaced by the following:

‘1. Subject to Article 214(1), credit protection deriving from a guarantee or credit derivative shall qualify as eligible unfunded credit protection where all of the following conditions are met:

(a) the credit protection is direct;

(b) the extent of the credit protection is clearly set out and incontrovertible;

(c) the credit protection contract does not contain any clause, the fulfilment of which is outside the direct control of the lending institution, that:

(i) would allow the protection provider to cancel or change the credit protection unilaterally;

(ii) would increase the effective cost of the credit protection as a result of a deterioration in the credit quality of the protected exposure;

(iii) could prevent the protection provider from being obliged to pay out in a timely manner in the event that the original obligor fails to make any payments due, or where the leasing contract has expired for the purposes of recognising guaranteed residual value under Articles 134(7) and 166(4);

(iv) could allow the maturity of the credit protection to be reduced by the protection provider;

(d) the credit protection contract is legally effective and enforceable in all jurisdictions which are relevant at the time of the conclusion of the credit agreement.

For the purposes of point (c), a clause in the credit protection contract providing that faulty due diligence or fraud by the lending institution cancels or diminishes the extent of the credit protection offered by the guarantor, shall not disqualify that credit protection from being eligible. Any credit protection contract which can, in the event of fraud of the obligor, be cancelled or of which the extent of credit protection can be diminished, shall be considered to not meet those requirements.

For the purposes of point (c), the protection provider may make one lump sum payment of all monies due under the claim, or may assume the future payment obligations of the obligor covered by the credit protection contract.’;

(106) Article 215 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (a) is replaced by the following:

'(a) on the qualifying default of or non-payment by the obligor, the lending institution has the right to pursue, in a timely manner, the guarantor for any monies due under the claim in respect of which the protection is provided.';

(ii) the following subparagraphs are added:

'The payment by the guarantor shall not be subject to the lending institution first having to pursue the obligor.

In the case of unfunded credit protection covering residential mortgage loans, the requirements in Article 213(1), point (c)(iii), and in the first subparagraph of this point, shall only have to be satisfied within 24 months.';

(b) paragraph 2 is replaced by the following:

'2. In the case of guarantees provided in the context of mutual guarantee schemes or provided by or counter-guaranteed by entities as listed in Article 214(2), the requirements in paragraph 1, point (a), of this Article and in Article 213(1), point (c)(iii) shall be considered to be satisfied where either of the following conditions is met:

(a) pursuant to the default of the obligor or to the event that the original obligor fails to make any payments due, the lending institution has the right to obtain in a timely manner a provisional payment by the guarantor that meets both the following conditions:

(i) the provisional payment represents a robust estimate of the amount of the loss that the lending institution is likely to incur, including losses resulting from the non-payment of interest and other types of payment which the borrower is obliged to make;

(ii) the provisional payment is proportional to the coverage of the guarantee;

(b) the lending institution can demonstrate to the satisfaction of the competent authorities that the effects of the guarantee, which shall also cover losses resulting from the non-payment of interest and other types of payments which the borrower is obliged to make, justify such treatment.';

(107) in Article 216, the following paragraph 3 is added:

'3. By way of derogation from paragraph 1, for a corporate exposure covered by a credit derivative, the credit event referred to in point (a)(iii) of that paragraph shall not need to be specified in the derivative contract provided that all of the following conditions are met:

(a) a 100 % vote is needed to amend the maturity, principal, coupon, currency or seniority status of the underlying corporate exposure;

(b) the legal domicile in which the corporate exposure is governed has a well-established bankruptcy code that allows for a company to reorganise and restructure, and provides for an orderly settlement of creditor claims.

Where the conditions laid down in point (a) and (b) are not met, the credit protection may nonetheless be eligible subject to a reduction in the value as specified in Article 233(2).';

(108) Article 217 is deleted;

(109) Article 219 is replaced by the following:

'Article 219

On-balance sheet netting

Loans to and deposits with the lending institution subject to on-balance sheet netting shall be treated by that institution as cash collateral for the purposes of calculating the effect of funded credit protection for those loans and deposits of the lending institution subject to on-balance sheet netting.';

(110) Article 220 is amended as follows:

(a) the title is replaced by the following:

'**Using the Supervisory Volatility Adjustments Approach for master netting agreements**';

(b) paragraph 1 is replaced by the following:

'1. Institutions that calculate the 'fully adjusted exposure value' (E*) for the exposures subject to an eligible master netting agreement covering securities financing transactions or other capital market-driven transactions shall calculate the volatility adjustments that they need to apply by using the Supervisory Volatility Adjustments Approach set out in Articles 223 to 227 for the Financial Collateral Comprehensive Method.';

(c) in paragraph 2, point (c) is replaced by the following:

'(c) apply the value of the volatility adjustment, or, where relevant, the absolute value volatility adjustment appropriate for a given group of securities or for a given type of commodities, to the absolute value of the positive or negative net position in the securities in that group of securities, or to the commodities from that type of commodities;';

(d) paragraph 3 is replaced by the following:

'3. Institutions shall calculate E* in accordance with the following formula:

$$E^* = \max\left(0; \sum_i E_i - \sum_j C_j + 0{,}4 \cdot E_{\mathrm{net}} + 0{,}6 \cdot \frac{E_{\mathrm{gross}}}{\sqrt{N}} + \sum_k \left|E_k^{\mathrm{fx}}\right| \cdot H_k^{\mathrm{fx}}\right)$$

where:

i = the index that denotes all separate securities, commodities or cash positions under the agreement, that are either lent, sold with an agreement to repurchase, or posted by the institution to the counterparty;

j = the index that denotes all separate securities, commodities or cash positions under the agreement that are either borrowed, purchased with an agreement to resell, or held by the institution;

k = the index that denotes all separate currencies in which any securities, commodities or cash positions under the agreement are denominated;

E_i = the exposure value of a given security commodity or cash position *i*, that is either lent, sold with an agreement to repurchase, or posted to the counterparty under the agreement that would apply in the absence of credit protection, where institutions calculate the risk weighted exposure amounts in accordance with Chapter 2 or Chapter 3, as applicable;

C_j = the value of a given security, commodity or cash position *j* that is either borrowed, purchased with an agreement to resell, or held by the institution under the agreement;

E_k^{fx} = the net position (positive or negative) in a given currency *k* other than the settlement currency of the agreement as calculated in accordance with paragraph 2, point (b);

H_k^{fx} = the foreign exchange volatility adjustment for currency *k*;

$E_{n\mathrm{et}}$ = the net exposure of the agreement, calculated as follows:

$$E_{n\mathrm{et}} = \left| \sum_{l=1}^{N} |E_l^{\mathrm{sec}}| \cdot H_l^{\mathrm{sec}} \right|$$

where:

l = the index that denotes all distinct groups of the same securities and all distinct types of the same commodities under the agreement;

E_l^{sec} = the net position (positive or negative) in a given group of securities *l*, or a given type of commodities *l*, under the agreement, calculated in accordance with paragraph 2, point (a);

H_l^{sec} = the volatility adjustment appropriate to a given group of securities *l*, or a given type of commodities *l*, determined in accordance with paragraph 2, point (c). The sign of H_l^{sec} shall be determined as follows:

(a) it shall have a positive sign where the group of securities *l* is lent, sold with an agreement to repurchase, or transacted in a manner similar to either securities lending or a repurchase agreement;

(b) it shall have a negative sign where group of securities *l* is borrowed, purchased with an agreement to resell, or transacted in a manner similar to either a securities borrowing or reverse repurchase agreement;

N = the total number of distinct groups of the same securities and distinct types of the same commodities under the agreement; for the purposes of this calculation, those groups and types $E_l^{\mathrm{sec}}$for which $|E_l^{\mathrm{sec}}|$ is less than $\frac{1}{10}\max_l(|E_l^{\mathrm{sec}}|)$ shall not be counted;

E_{gross} = the gross exposure of the agreement, calculated as follows:

$$E_{\mathrm{gross}} = \sum_{l=1}^{N} |E_l^{\mathrm{sec}}| \cdot |H_l^{\mathrm{sec}}|.\text{'};$$

(111) Article 221 is amended as follows:

(a) paragraphs 1, 2 and 3 are replaced by the following:

‘1. For the purposes of calculating risk-weighted exposure amounts and expected loss amounts for securities financing transactions or other capital market-driven transactions other than derivative transactions covered by an eligible master netting agreement that meets the requirements set out in Chapter 6, Section 7, an institution may calculate the fully adjusted exposure value (E*) of the agreement using the internal models approach, provided that the institution meets the conditions set out in paragraph 2.’;

2. An institution may use the internal models approach where all of the following conditions are met:

(a) the institution uses that approach only for exposures for which the risk weighted exposures amounts are calculated under the IRB Approach set out in Chapter 3;

(b) the institution is granted the permission to use that approach by its competent authorities’;

3. An institution that uses an internal models approach shall do so for all counterparties and securities, with the exception of immaterial portfolios for which it may use the Supervisory Volatility Adjustments Approach laid down in Article 220’;

(b) paragraph 8 is deleted.

(112) Article 223 is amended as follows

(a) in paragraph 4, point (b) is replaced by the following:

‘(b) for off-balance sheet items other than derivatives treated under the IRB Approach, institutions shall calculate their exposure values using CCFs of 100 % instead of the SA-CCFs or IRB-CCFs provided for in Article 166, paragraphs 8, 8a and 8b.’;

(b) paragraph 6 is replaced by the following:

‘6. Institutions shall calculate volatility adjustments by using the Supervisory Volatility Adjustments Approach referred to in Articles 224 to 227.’;

(113) In Article 224, paragraph 1, Tables 1 to 4 are replaced by the following:

‘*Table 1*

Table 1Credit quality step with which the credit assessment of the debt	Residual Maturity (m), expressed in years	Volatility adjustments for debt securities issued by entities as referred to in Article 197(1), point (b)	Volatility adjustments for debt securities issued by entities as referred to inArticle 197(1), points (c) and (d)	Volatility adjustments for securitisation positions and meeting the criteria laid down in Article 197(1), point (h)

security is associated										
		20-day liquidation period (%)	10-day liquidation period (%)	5-day liquidation period (%)	20-day liquidation period (%)	10-day liquidation period (%)	5-day liquidation period (%)	20-day liquidation period (%)	10-day liquidation period (%)	5-day liquidation period (%)
1	m ≤ 1	0,707	0,5	0,354	1,414	1	0,707	2,828	2	1,414
	1 < m ≤ 3	2,828	2	1,414	4,243	3	2,121	11,314	8	5,657
	3 < m ≤ 5	2,828	2	1,414	5,657	4	2,828	11,314	8	5,657
	5 < m ≤ 10	5,657	4	2,828	8,485	6	4,243	22,627	16	11,314
	m > 10	5,657	4	2,828	16,971	12	8,485	22,627	16	11,314
2-3	m ≤ 1	1,414	1	0,707	2,828	2	1,414	5,657	4	2,828
	1 < m ≤ 3	4,243	3	2,121	5,657	4	2,828	16,971	12	8,485
	3 < m ≤ 5	4,243	3	2,121	8,485	6	4,243	16,971	12	8,485
	5 < m ≤ 10	8,485	6	4,243	16,971	12	8,485	33,941	24	16,971
	m > 10	8,485	6	4,243	28,284	20	14,142	33,941	24	16,971
4	all	21,213	15	10,607	N/A	N/A	N/A	N/A	N/A	N/A

Table 2

<table>
<tr><td rowspan="2">Credit quality step with which the credit assessment of a short term debt security is associated</td><td rowspan="2">Residual Maturity (m), expressed in years</td><td colspan="3">Volatility adjustments for debt securities issued by entities as referred to inArticle 197(1), point (b) with short-term credit assessments</td><td colspan="3">Volatility adjustments for debt securities issued by entities as referred to inArticle 197(1), points (c) and (d) with short-term credit assessments</td><td colspan="3">Volatility adjustments for securitisation positions and meeting the criteria laid down in Article 197(1), point (h) with short-term credit assessments</td></tr>
<tr><td>20-day liquidation period (%)</td><td>10-day liquidation period (%)</td><td>5-day liquidation period (%)</td><td>20-day liquidation period (%)</td><td>10-day liquidation period (%)</td><td>5-day liquidation period (%)</td><td>20-day liquidation period (%)</td><td>10-day liquidation period (%)</td><td>5-day liquidation period (%)</td></tr>
<tr><td>1</td><td></td><td>0,707</td><td>0,5</td><td>0,354</td><td>1,414</td><td>1</td><td>0,707</td><td>2,828</td><td>2</td><td>1,414</td></tr>
<tr><td>2-3</td><td></td><td>1,414</td><td>1</td><td>0,707</td><td>2,828</td><td>2</td><td>1,414</td><td>5,657</td><td>4</td><td>2,828</td></tr>
</table>

Table 3

Other collateral or exposure types

	20-day liquidation period (%)	10-day liquidation period (%)	5-day liquidation period (%)
Main Index Equities, Main Index Convertible Bonds	28,284	20	14,142
Other Equities or Convertible Bonds listed on a recognised exchange	42,426	30	21,213
Cash	0	0	0
Gold bullion	28,284	20	14,142

Table 4

Volatility adjustment for currency mismatch (H_{fx})

20-day liquidation period (%)	10-day liquidation period (%)	5-day liquidation period (%)
11,314	8	5,657

’;

(114) Article 225 is deleted;

(115) Article 226 is replaced by the following:

‘Article 226

Scaling up of volatility adjustment under the Financial Collateral Comprehensive Method

The volatility adjustments set out in Article 224 are the volatility adjustments an institution shall apply where there is daily revaluation. Where the frequency of revaluation is less than daily, institutions shall apply larger volatility adjustments. Institutions shall calculate them by scaling up the daily revaluation volatility adjustments, using the following square-root-of-time formula:

$$H = H_M \cdot \sqrt{\frac{N_R + (T_M - 1)}{T_M}}$$

where:

H = the volatility adjustment to be applied;

H_M = the volatility adjustment where there is daily revaluation;

N_R = the actual number of business days between revaluations;

T_M = the liquidation period for the type of transaction in question.’;

(116) in Article 227, paragraph 1 is replaced by the following:

‘1. Institutions that use the Supervisory Volatility Adjustments Approach referred to in Article 224, may, for repurchase transactions and securities lending or borrowing transactions, apply a 0 % volatility adjustment instead of the volatility adjustments calculated under Articles 224 to 226, provided that the conditions set out in paragraph 2, points (a) to (h) are satisfied. Institutions that use the internal models approach set out in Article 221 shall not use the treatment set out in this Article.’;

(117) Article 228 is amended as follows:

(a) the title is replaced by the following:

‘**Calculating risk-weighted exposure amounts under the Financial Collateral Comprehensive method for exposures in the Standardised Approach**’;

(b) paragraph 2 is deleted;

(118) Article 229 is amended as follows:

(a) the title is replaced by the following:

'**Valuation principles for eligible collateral other than financial collateral**';

(b) paragraph 1 is replaced by the following:

'1. The valuation of immovable property shall meet all of the following requirements:

(a) the value shall be appraised independently from an institution's mortgage acquisition, loan processing and loan decision process by an independent valuer who possesses the necessary qualifications, ability and experience to execute a valuation;

(b) the value is appraised using prudently conservative valuation criteria which meet all of the following requirements:

(i) the value excludes expectations on price increases;

(ii) the value is adjusted to take into account the potential for the current market price to be significantly above the value that would be sustainable over the life of the loan;

(c) the value is not higher than a market value for the immovable property where such market value can be determined.

The value of the collateral shall reflect the results of the monitoring required under Article 208(3) and take account of any prior claims on the immovable property.';

(119) Article 230 is replaced by the following:

'Article 230

Calculating risk-weighted exposure amounts and expected loss amounts for an exposure with an eligible FCP under the IRB Approach

1. Under the IRB Approach, except for those exposures that fall under the scope of Article 220, institutions shall use the effective LGD (LGD*) as the LGD for the purposes of Chapter 3 to recognise funded credit protection eligible pursuant to this Chapter. Institutions shall calculate LGD* as follows:

$$LGD^* = LGD_U \cdot \frac{E_U}{E \cdot (1 + H_E)} + LGD_S \cdot \frac{E_S}{E \cdot (1 + H_E)}$$

where:

E = the exposure value before taking into account the effect of the funded credit protection. For an exposure secured with financial collateral eligible in accordance with this Chapter, that amount shall be calculated in accordance with Article 223(3). In the case of securities lent or posted, that amount shall be equal to the cash lent or securities lent or posted. For securities that are lent or posted the exposure value shall be increased by applying the volatility adjustment (H_E) in accordance with Articles 223 to 227;

E_S = the current value of the funded credit protection received after the application of the volatility adjustment applicable to that type of funded credit protection (H_C) and the application of the volatility adjustment for currency mismatches (H_{fx}) between the exposure and the funded credit protection, in accordance with paragraphs 2 and 2a. E_S shall be capped at the following value: $E \cdot (1+H_E)$;

$E_U \quad = E \cdot (1+H_E) - E_S$;

LGD_U = the applicable LGD for an unsecured exposure as set out in Article 161(1);

LGD_S = the applicable LGD to exposures secured by the type of eligible FCP used in the transaction, as specified in paragraph 2, Table 2aaa.

2. Table 2aaa specifies the values of LGD_S and H_c applicable in the formula set out in paragraph 1.

Table 2aaa

Type of FCP	LGD_S	Volatility adjustment (H_c)
financial collateral	0 %	Volatility adjustment H_c as set out in Articles 224 to 227.
receivables	20 %	40 %
residential and commercial immovable property	20 %	40 %
Other physical collateral	25 %	40 %
Ineligible FCP	Not applicable	100 %

2a. Where an eligible funded credit protection is denominated in a different currency than that of the exposure, the volatility adjustment for currency mismatch (H_{fx}) shall be the same as the one that applies pursuant to Articles 224 to 227.

3. As an alternative to the treatment set out in paragraphs 1 and 2, and subject to Article 124(7), institutions may assign a 50 % risk weight to the part of the exposure that is, within the limits set out in Article 125(1), point (a) and Article 126(1), point (a) respectively, fully collateralised by residential property or commercial immovable property situated within the territory of a Member State where all of the conditions laid down in Article 199, paragraph 3 or 4 are met.

4. To calculate risk-weighted exposure amounts and expected loss amounts for IRB exposures that fall within the scope of Article 220, institutions shall use E* in accordance with Article 220(4) and shall use LGD for unsecured exposures, as set out in Article 161(1), points (a), (aa) and (b).';

(120) Article 231 is replaced by the following:

'Article 231

Calculating risk-weighted exposure amounts and expected loss amounts in the case of pools of eligible funded credit protections for an exposure under the IRB Approach

Institutions that have obtained multiple types of funded credit protections may, for exposures treated under the IRB Approach, apply the formula set out in Article 230, sequentially for each individual type of collateral. For that purpose, those institutions shall, after each step of recognising one individual type of FCP, reduce the remaining value of the unsecured exposure (E_U) by the adjusted value of the collateral (E_S) recognised in that step. In accordance with Article 230(1), the total of E_S across all funded credit protection types shall be capped at the value of $E \cdot (1+H_E)$, resulting in the following formula:

$$LGD^* = LGD_U \cdot \frac{E_U}{E \cdot (1 + H_E)} + \sum_i LGD_{S,i} \cdot \frac{E_{S,i}}{E \cdot (1 + H_E)}$$

where:

$LGD_{S,i}$ = the LGD applicable to FCP i, as specified in Article 230(2);

$E_{S,i}$ = the current value of FCP i received after the application of the volatility adjustment applicable for the type of FCP (H_c) pursuant to Article 230(2).';

(121) in Article 232, paragraph 1 is replaced by the following:

'1. Where the conditions set out in Article 212(1) are met, cash on deposit with, or cash assimilated instruments held by, a third party institution in a non-custodial arrangement and pledged to the lending institution, may be treated as a guarantee provided by the third party institution.';

(122) in Article 233, paragraph 4 is replaced by the following:

'4. Institutions shall base the volatility adjustments for any currency mismatch on a 10 business day liquidation period, assuming daily revaluation, and shall calculate those adjustments based on the Supervisory Volatility Adjustments as set out in Articles 224. Institutions shall scale up the volatility adjustments in accordance with Article 226.';

(123) Article 235 is amended as follows:

(a) the title is amended as follows:

'Calculating risk-weighted exposure amounts under the substitution approach when the guaranteed exposure is under the Standardised Approach'*;*

(b) paragraph 1 is replaced by the following:

'1. For the purposes of Article 113(3), institutions shall calculate the risk-weighted exposure amounts for exposures with unfunded credit protection to which those institutions apply the Standardised Approach, irrespective of the treatment of comparable direct exposure to the protection provider, in accordance with the following formula:

$$\max\{0, E - G_A\} \cdot r + G_A \cdot g$$

where:

E = the exposure value calculated in accordance with Article 111. For that purpose, the exposure value of an off-balance sheet item listed in Annex I shall be 100 % of its value rather than the exposure value indicated in Article 111(1);

G_A = the amount of credit risk protection as calculated under Article 233(3) (G*) further adjusted for any maturity mismatch as laid down in Section 5;

r = the risk weight of exposures to the obligor as specified in Chapter 2;

g = the risk weight of exposures to the protection provider as specified in Chapter 2.'

(c) paragraph 3 is replaced by the following:

'3. Institutions may extend the preferential treatment set out in Article 114, paragraphs 4 and 7, to exposures or parts of exposures guaranteed by the central government or the central bank as if those exposures were direct exposures to the central government or the central bank, provided that the conditions in Article 114, paragraphs 4 or 7, as applicable, are met for such direct exposures.';

(124) the following Article 235a is inserted:

'Article 235a

Calculating risk-weighted exposure and expected loss amounts under the substitution approach when the guaranteed exposure is treated under the IRB Approach and comparable direct exposures to the protection provider are treated under the Standardised Approach

1. For exposures with unfunded credit protection to which an institution applies the IRB Approach referred to in Chapter 3 and where comparable direct exposures to the protection provider are treated under the Standardised Approach, institutions shall calculate the risk-weighted exposure amounts in accordance with the following formula:

$$\max\{0, E - G_A\} \cdot r + G_A \cdot g$$

where:

E = the exposure value determined in accordance with Chapter 3, Section 5. For that purpose, institutions shall calculate the exposure value for off-balance sheet items other than derivatives treated under the IRB Approach using CCFs of 100 % instead of the SA-CCFs or IRB-CCFs provided for in Article 166, paragraphs 8, 8a and 8b;

G_A = the amount of credit risk protection as calculated in accordance with Article 233(3) (G*) further adjusted for any maturity mismatch as laid down in Chapter 3, Section 5;

r = the risk weight of exposures to the obligor as specified in Chapter 3;

g = the risk weight of exposures to the protection provider as specified in Chapter 2.

2. Where the protected amount (G_A) is less than the exposure (E), institutions may apply the formula specified in paragraph 1 only where the protected and unprotected parts of the exposure are of equal seniority.

3. Institutions may extend the preferential treatment set out in Article 114, paragraphs 4 and 7, to exposures or parts of exposures guaranteed by the central

government or the central bank as if those exposures were direct exposures to the central government or the central bank, provided that the conditions in Article 114, paragraphs 4 or 7, as applicable, are met for such direct exposures.

4. The expected loss amount for the covered portion of the exposure value shall be zero.

5. For any uncovered portion of the exposure value (E) the institution shall use the risk weight and the expected loss corresponding to the underlying exposure. For the calculation laid down in Article 159, institutions shall assign any general or specific credit risk adjustments or additional value adjustments in accordance with Articles 34 related to the non-trading book business of the institution or other own funds reductions related to the exposure, to the uncovered portion of the exposure value.';

(125) Article 236 is amended as follows:

(a) the title is replaced by the following:

'**Calculating risk-weighted exposure amounts and expected loss amounts under the substitution approach when the guaranteed exposure is treated under the IRB Approach and a comparable direct exposure to the protection provider is treated under the IRB Approach**';

(b) paragraph 1 is replaced by the following:

'1. For an exposure with unfunded credit protection to which an institution applies the IRB Approach referred to in Chapter 3, but without using its own estimates of loss given default (LGD), and where comparable direct exposures to the protection provider are treated under the IRB Approach set out in Chapter 3, institutions shall determine the covered portion of the exposure as the lower of the exposure value E and the adjusted value of the unfunded credit protection G_A;'

(c) the following paragraphs 1a to 1d are inserted:

'1a. An institution that applies to comparable direct exposures to the protection provider the IRB Approach using own estimates of PD shall calculate the risk-weighted exposure amount and the expected loss amount for the covered portion of the exposure value by using the PD of the protection provider and the LGD applicable for a comparable direct exposure to the protection provider as referred to in Article 161(1), in accordance with paragraph 1b. For subordinated exposures and non-subordinated unfunded credit protection, the LGD to be applied by institutions to the covered portion of the exposure value is the LGD associated with senior claims and that may account for any collateralisation of the underlying exposure in accordance with this Chapter.

1b. Institutions shall calculate the risk weight and expected loss applicable to the covered portion of the underlying exposure using the PD, the LGD specified in paragraph 1a, and the same risk weight function as the ones used for a comparable direct exposure to the protection provider, and shall, where applicable, use the maturity M related to the underlying exposure, calculated in accordance with Article 162.

1c. Institutions that apply to comparable direct exposures to the protection provider the IRB Approach using the method provided for in Article 153(5), shall use the risk weight and expected loss applicable to the covered portion of the exposure that correspond to the ones provided for in Articles 153(5) and 158(6).

1d. Notwithstanding paragraph 1c, institutions that apply to guaranteed exposures the IRB Approach using the method provided for in Article 153(5) shall calculate the risk weight and expected loss applicable to the covered portion of the exposure using the PD, the LGD applicable for a comparable direct exposure to the protection provider as referred to in Article 161(1), in accordance with paragraph 1b, and the same risk weight function as the ones used for a comparable direct exposure to the protection provider, and shall, where applicable, use the maturity M related to the underlying exposure, calculated in accordance with Article 162. For subordinated exposures and non-subordinated unfunded credit protection, the LGD to be applied by institutions to the covered portion of the exposure value is the LGD associated with senior claims and that may account for any collateralisation of the underlying exposure in accordance with this Chapter.';

(d) paragraph 2 is replaced by the following:

'2. For any uncovered portion of the exposure value (E), institutions shall use the risk weight and the expected loss corresponding to the underlying exposure. For the calculation laid down in Article 159, institutions shall assign any general and specific credit risk adjustments, additional value adjustments related to the non-trading book business of the institution as referred to in Article 34 and other own funds reductions related to the exposure other than the deductions made in accordance with Article 36(1), point (m), to the uncovered portion of the exposure value.';

(126) the following Article 236a is inserted:

'Article 236a

Calculating risk-weighted exposure amounts and expected loss amounts under the substitution approach when the guaranteed exposure is treated under the IRB Approach using own estimates of loss given default (LGD) and a comparable direct exposure to the protection provider is treated under the IRB Approach

1. For an exposure with unfunded credit protection to which an institution applies the IRB Approach referred to in Chapter 3 using its own estimates of loss given default (LGD) and where comparable direct exposures to the protection provider are treated under the IRB Approach referred to in Chapter 3, institutions shall determine the covered portion of the exposure as the lower of the exposure value E and the adjusted value of the unfunded credit protection G_A. The risk-weighted exposure amount and the expected loss amount for the covered portion of the exposure value shall be calculated by using the PD, the LGD and the same risk weight function as the ones used for a comparable direct exposure to the protection provider, and shall, where applicable, use the maturity M related to the underlying exposure, calculated in accordance with Article 162.

2. Institution that apply the IRB Approach referred to in Chapter 3 but without using their own estimates of loss given default (LGD) to comparable direct exposures to the protection provider, shall determine the LGD in accordance with Article 161. For subordinated exposures and non-subordinated unfunded credit protection, the LGD to be applied by institutions to the covered portion of the exposure value is the LGD

associated with senior claims and that may account for any collateralisation of the underlying exposure in accordance with this Chapter.

3. Institutions that apply the IRB Approach referred to in Chapter 3 using their own estimates of LGD to comparable direct exposures to the protection provider, shall calculate the risk weight and the expected loss applicable to the covered portion of the underlying exposure using the PD, the LGD and the same risk weight function as the ones used for such a comparable direct exposure to the protection provider, and shall use the maturity M related to the underlying exposure, calculated, where applicable, in accordance with Article 162.

4. Institution that apply to comparable direct exposures to the protection provider the IRB Approach using the method provided for in Article 153(5), shall apply the risk weight and expected loss applicable to the covered portion of the exposure that correspond to the ones provided in Articles 153(5) and 158(6).

5. For any uncovered portion of the exposure value (E), institutions shall use the risk weight and the expected loss corresponding to the underlying exposure. For the calculation laid down in Article 159, institutions shall assign any general and specific credit risk adjustments, additional value adjustments related to the non-trading book business of the institution as referred to in Article 34 and other own funds reductions related to the exposure other than the deductions made in accordance with Article 36(1), point (m), to the uncovered portion of the exposure value.';

(127) in Part three, Title II, Chapter 4, Section 6 is deleted;

(128) in Article 273(3), point (b) is replaced by the following:

'(b) in accordance with Article 183, where permission has been granted in accordance with Article 143.'

(129) Article 273b is amended as follows:

(a) the title is replaced by the following:

'Article 273b
Non-compliance with the conditions for using simplified methods for calculating the exposure value of derivatives and the simplified approach for calculating the own funds requirement for CVA risk';

(b) in paragraph 2, the introductory wording is replaced by the following:

'Institutions shall cease to calculate the exposure values of its derivative positions in accordance with Section 4 or 5 and to calculate the own funds requirement for CVA risk in accordance with Article 385, as applicable, within three months of one of the following occurring:';

(c) paragraph 3 is replaced by the following:

'3. Institutions that have ceased to calculate the exposure values of its derivative positions in accordance with Section 4 or 5 and to calculate the own funds requirement for CVA risk in accordance with Article 385, as applicable, shall only be permitted to resume calculating the exposure value of their derivative positions as set out in Section 4 or 5 and the own funds requirement for CVA risk in accordance with Article 385 where they demonstrate to the competent authority that all the conditions set out in Article 273a, paragraphs 1 or 2, have been met for an uninterrupted period of one year.';

(130) Article 274 is amended as follows:

(a) paragraph 4 is replaced by the following:

'4. Where multiple margin agreements apply to the same netting set, or the same netting set includes both transactions subject to a margin agreement and transactions not subject to a margin agreement, an institution shall calculate its exposure value as follows:

(a) the institution shall establish the hypothetical sub-netting sets concerned, composed of transactions included in the netting set, as follows:

(i) all transactions subject to a margin agreement and to the same margin period of risk as determined in accordance with Article 285, paragraphs 2 to 5, shall be allocated to the same sub-netting set;

(ii) all transactions not subject to a margin agreement shall be allocated to the same sub-netting set, distinct from the sub-netting sets established in accordance with point (i).

(b) the institution shall calculate the replacement cost of the netting set referred to in the introductory sentence of this paragraph in accordance with Article 275(2) by taking into account all the transactions within the netting set, subject to a margin agreement or not, and apply all of the following:

(i) CMV shall be calculated for all the transactions within a netting set gross of any collateral held or posted where positive and negative market values are netted in computing the CMV;

(ii) NICA, VM, TH, and MTA, where applicable, shall be calculated separately as the sum across the same inputs applicable to each individual margin agreement of the netting set.

(c) the institution shall calculate the potential future exposure of the netting set referred to in Article 278 by applying all of the following:

(i) the multiplier referred to in Article 278(1) shall be based on the inputs CMV, NICA and VM, as applicable, in accordance with point (b) of this paragraph;

(ii) $\sum_a AddOn^{(a)}$ shall be calculated in accordance with Article 278, separately for each hypothetical sub-netting set referred to in point (a)';

(b) in paragraph 6, the following subparagraph is added:

'By way of derogation from the first sub-paragraph, institutions shall replace a vanilla digital option whose strike equals to K with the relevant collar combination of two sold and bought vanilla call or put options that meet with the following requirements:

(a) the two options of the collar combination shall have:

(i) the same expiry date and same spot or forward price of the underlying instrument as the vanilla digital option;

(ii) strikes equal to $0.95 \cdot K$ and $1.05 \cdot K$ respectively;

(b) the collar combination exactly replicates the vanilla digital option payoff outside the range between the two strikes referred to in point (a);

The risk position of the two options of the collar combination shall be calculated separately in accordance with Article 279.';

(131) in Part Three, Title III is replaced by the following:

'TITLE III
OWN FUNDS REQUIREMENTS FOR OPERATIONAL RISK

Article 311a
Definitions

For the purposes of this Title, the following definitions shall apply:

(a) 'operational risk event' means any event linked to an operational risk which generates a loss or multiple losses, within one or multiple financial years;

(b) 'aggregated gross loss' means the sum of all gross losses linked to the same operational risk event over one or multiple financial years;

(c) 'aggregated net loss' means the sum of all net losses linked to the same operational risk event over one or multiple financial years.

CHAPTER 1
Calculation of own funds requirements for operational risk

Article 312
Own funds requirement

The own funds requirement for operational risk shall be the business indicator component calculated in accordance with Article 313.

Article 313
Business indicator component

Institutions shall calculate their business indicator component in accordance with the following formula:

$$BIC = \begin{cases} 0.12 \cdot \mathrm{BI}, & \text{where } \mathrm{BI} \leq 1 \\ 0.12 + 0.15 \cdot (\mathrm{BI} - 1), & \text{where } 1 < \mathrm{BI} \leq 30 \\ 4.47 + 0.18 \cdot (\mathrm{BI} - 30), & \text{where } \mathrm{BI} > 30 \end{cases}$$

where:

BIC = the business indicator component;

BI = the business indicator, expressed in billions of euro, calculated in accordance with Article 314.

Article 314

Business indicator

1. Institutions shall calculate their business indicator in accordance with the following formula:

$$BI = ILDC + SC + FC$$

where:

BI = the business indicator, expressed in billions of euro;

ILDC = the interest, leases and dividend component, expressed in billions of euros and calculated in accordance with paragraph 2;

SC = the services component, expressed in billions of euros and calculated in accordance with paragraph 3;

FC = the financial component, expressed in billions of euros and calculated in accordance with paragraph 4.

2. For the purposes of paragraph 1, the interest, leases and dividend component shall be calculated in accordance with the following formula:

$$ILDC = \min(IC, 0.0225 * AC) + DC$$

where:

ILDC = the interest, leases and dividend component;

IC = the interest component, which is the institution's interest income from all financial assets and other interest income, including finance income from financial and income from operating leases and profits from leased assets, minus the institution's interest expenses from all financial liabilities and other interest expenses, including interest expense from financial and operating leases, depreciation and impairment of, and losses from, operating leased assets, calculated as the annual average of the absolute values of the difference over the previous three financial years;

AC = the asset component, which is the sum of the institution's total gross outstanding loans, advances, interest bearing securities, including government bonds, and lease assets, calculated as the annual average over the previous three financial years on the basis of the amounts at the end of each of the respective financial years;

DC = the dividend component, which is the institution's dividend income from investments in stocks and funds not consolidated in the financial statements of the institution, including dividend income from non-consolidated subsidiaries, associates and joint ventures, calculated as the annual average over the previous three financial years.

3. For the purposes of paragraph 1, the services component shall be calculated in accordance with the following formula:

$$SC = \max(OI, OE) + \max(FI, FE)$$

where:

SC = the services component;

OI = the other operating income, which is the annual average over the previous three financial years of the institution’s income from ordinary banking operations not included in other items of the business indicator but of similar nature;

OE = the other operation expenses, which is the annual average over the previous three financial years of the institution’s expenses and losses from ordinary banking operations not included in other items of the business indicator but of similar nature, and from operational risk events;

FI = the fee and commission income component, which is the annual average over the previous three financial years of the institution’s income received from providing advice and services, including income received by the institution as an outsourcer of financial services;

FE = the fee and commission expenses component, which is the annual average over the previous three financial years of the institution’s expenses paid for receiving advice and services, including outsourcing fees paid by the institution for the supply of financial services, but excluding outsourcing fees paid for the supply of non-financial services.

4. For the purposes of paragraph 1, the financial component shall be calculated in accordance with the following formula:

$$FC = TC + BC$$

where:

FC = the financial component;

TC = the trading book component, which is the annual average of the absolute values over the previous three financial years of the net profit or loss, as applicable, on the institution’s trading book, including on trading assets and trading liabilities, from hedge accounting, and from exchange differences;

BC = the banking book component, which is the annual average of the absolute values over the previous three financial years of the net profit or loss, as applicable, on the institution’s banking book, including on financial assets and liabilities measured at fair value through profit and loss, from hedge accounting, from exchange differences, and realised gains and losses on financial assets and liabilities not measured at fair value through profit and loss.

5. Institutions shall not use any of the following elements in the calculation of their business indicator:

(a) income and expenses from insurance or reinsurance businesses;

(b) premiums paid and payments received from insurance or reinsurance policies purchased;

(c) administrative expenses, including staff expenses, outsourcing fees paid for the supply of non-financial services, and other administrative expenses;

(d) recovery of administrative expenses including recovery of payments on behalf of customers;

(e) expenses of premises and fixed assets, except where those expenses result from operational loss events;

(f) depreciation of tangible assets and amortisation of intangible assets, except the depreciation related to operating lease assets, which shall be included in financial and operating lease expenses;

(g) provisions and reversal of provisions, except where those provisions relate to operational loss events;

(h) expenses due to share capital repayable on demand;

(i) impairment and reversal of impairment;

(j) changes in goodwill recognised in profit or loss;

(k) corporate income tax.

6. EBA shall develop draft regulatory technical standards to specify the following:

(a) the components of the business indicator by developing a list of typical sub-items, taking into account international regulatory standards;

(b) the elements listed in paragraph 5.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 18 months after entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

7. EBA shall develop draft implementing technical standards to specify the items of the business indicator by mapping those items with the reporting cells concerned set out in Commission Implementing Regulation (EU) 2021/451[*5].

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 24 months after entry into force of this Regulation].

Power is delegated to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.

Article 315

Adjustments to the business indicator

1. Institutions shall include business indicator items of merged or acquired entities or activities in their business indicator calculation from the time of the merger or acquisition, as applicable, and shall cover the previous three financial years.

2. Institutions may request permission from the competent authority to exclude business indicator items related to disposed entities or activities from the calculation of their business indicator.

3. EBA shall develop draft regulatory technical standards to specify the following:

(a) how institutions shall determine the adjustments to the business indicator referred to in paragraph 1 and 2;

(b) the conditions according to which competent authorities may grant the permission referred to in paragraph 2;

(c) the timing of the adjustments referred to in paragraph 2.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 18 months after entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

CHAPTER 2
Data collection and governance

Article 316
Calculation of the annual operational risk loss

1. Institutions with a business indicator equal to or exceeding EUR 750 million shall calculate annual operational risk losses as the sum of all net losses over a given financial year, calculated in accordance with Article 318(1), that are equal to or exceed the loss data thresholds set out in Article 319, paragraphs 1 or 2, respectively.

By way of derogation from the first subparagraph, competent authorities may grant a waiver from the requirement to calculate an annual operational risk loss to institutions with a business indictor that does not exceed EUR 1 billion, provided that the institution has demonstrated to the satisfaction of the competent authority that it would be unduly burdensome for the institution to apply the first subparagraph.

2. For the purposes of paragraph 1, the relevant business indicator shall be the highest value of the business indicator the institution has reported at the last eight reporting reference dates. An institution that has not yet reported its business indicator shall use its most recent business indicator.

3. EBA shall develop draft regulatory technical standards to specify the condition of ‘unduly burdensome’ for the purposes of the first paragraph.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 18 months after entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 317
Loss data set

1. Institutions that calculate annual operational risk losses in accordance with Article 316(1) shall have in place arrangements, processes and mechanisms to inform and maintain updated on an ongoing basis a loss data set compiling for each recorded operational risk event the gross loss amounts, non-insurance recoveries, insurance recoveries, reference date and grouped losses, including those from misconduct events.

2. The institution’s loss data set shall capture all operational risk events stemming from all the entities that are part of the scope of consolidations pursuant to Part One, Title II, Chapter 2.

3. For the purpose of paragraph 1, institutions shall:

(a) include in the loss data set each operational risk event recorded during one or multiple financial years;

(b) use a date no later than the date of accounting for including losses related to operational risk events in the loss data set;

(c) allocate losses and related recoveries posted to the accounts over several years to the corresponding financial years of the loss data set, in line with their accounting treatment.

4. Institutions shall also collect:

(a) information about the reference dates of operational risk events, including:

    (i) the date when the operational risk event happened or first began ('date of occurrence'), where available;

    (ii) the date on which the institution became aware of the operational risk event ('date of discovery');

    (iii) the date or dates on which an operational risk event results in a loss, or the reserve or provision against a loss, recognised in the institution's profit and loss accounts ('date of accounting');

(b) information on any recoveries of gross loss amounts as well as descriptive information about the drivers or causes of the loss events.

The level of detail of any descriptive information shall be commensurate with the size of the gross loss amount.

5. An institution shall not include in the loss data set operational risk events related to credit risk that are accounted for in the risk weighted exposure amount for credit risk. Operational risk events that relate to credit risk but are not accounted for in the risk weighted exposure amount for credit risk shall be included in the loss data set.

6. Operational risk events related to market risk shall be treated as operational risk and be included in the loss data set.

7. An institution shall upon request from the competent authority be able to map its historical internal loss data to the type of events.

8. For the purposes of this Article, institutions shall ensure the soundness, robustness and performance of the IT infrastructure necessary to maintain and update the loss data set by confirming all of the following:

(a) that the IT systems and infrastructure of the institution for the purposes of this Article are sound and resilient and that that soundness and resilience can be maintained on a continuous basis;

(b) that the institution's IT infrastructure implemented for the purpose of this Article is subject to configuration management, change management and release management processes;

(c) where the institution outsources parts of the maintenance of the IT infrastructure implemented for the purpose of this Article, that the soundness, robustness and performance of the IT infrastructure is ensured by confirming at least the following:

(i) that the IT systems and infrastructure of the institution for the purpose of this Article are sound and resilient and that those features can be maintained on a continuous basis;

(ii) that the process for planning, creating, testing, and deploying the IT infrastructure for the purpose of this Article is sound and proper with reference to project management, risk management, and governance, engineering, quality assurance and test planning, systems' modelling and development, quality assurance in all activities, including code reviews and where appropriate, code verification, and testing, including user acceptance;

(iii) that the institution's IT infrastructure for the purpose of this Article is subject to configuration management, change management and release management processes;

(iv) that the process for planning, creating, testing, and deploying the IT infrastructure and contingency plans for the purpose of this Article is approved by the institution's management body or senior management and that the management body and senior management are periodically informed about the IT infrastructure performance for the purposes of this Article.

9. For the purposes of paragraph 6 of this Article, EBA is mandated to develop draft regulatory technical standards establishing a risk taxonomy on operational risk and a methodology to classify, based on that risk taxonomy on operational risk, the loss events included in the loss data set.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 18 months after entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

10. For the purposes of paragraph 7, EBA shall develop guidelines explaining the technical elements necessary to ensure the soundness, robustness and performance of governance arrangements to maintain the loss data set, with a particular focus on IT systems and infrastructures.

Those guidelines shall be issued in accordance with Article 16 of Regulation (EU) No 1093/2010.

Article 318

Calculation of net loss and gross loss

1. For the purposes of Article 316(1), institutions shall calculate for each operational risk event a net loss as follows:

$$\text{Net loss} = \text{gross loss} - \text{recovery}$$

where:

gross loss = a loss linked to an operational risk event before recoveries of any type;

recovery = one or multiple independent occurrences, related to the original operational risk event, separated in time, in which funds or inflows of economic benefits are received from a third party.

Institutions shall maintain on an ongoing basis an updated calculation of the net loss for each specific operational risk event. To that end, institutions shall update the net loss calculation based on the observed or estimated variations of the gross loss and the recovery for each of the last ten financial years. Where losses, linked to the same operational risk event, are observed during multiple financial years within that ten-year time window, the institution shall calculate and maintain updated:

(a) the net loss, gross loss and recovery for each of the financial years of the ten-year time window where that net loss, gross loss and recovery were recorded;

(b) the aggregated net loss, aggregated gross loss and aggregated recovery of all the relevant financial years of the ten-year time window.

2. For the purposes of paragraph 1, the following items shall be included in the gross loss computation:

(a) direct charges, including impairments, settlements, amounts paid to make good the damage, penalties, interest in arrears and legal fees to the institution's profit and loss accounts and write-downs due to the operational risk event, including:

 (i) where the operational risk event relates to market risk, the costs to unwind market positions in the recovered loss amount of the operational risk items;

 (ii) where payments relate to failures or inadequate processes of the institution, penalties, interest charges, late-payment charges, and legal fees, and, with the exclusion of the tax amount originally due, tax;

(b) costs incurred as a consequence of the operational risk event, including external expenses with a direct link to the operational risk event and costs of repair or replacement, incurred to restore the position that was prevailing before the operational risk event occurred;

(c) provisions or reserves accounted for in the profit and loss accounts against the potential operational loss impact, including those from misconduct events;

(d) losses stemming from operational risk events with a definitive financial impact which are temporarily booked in transitory or suspense accounts and are not yet reflected in the profit and loss accounts ('pending losses');

(e) negative economic impacts booked in a financial year and which are due to operational risk events impacting the cash flows or financial statements of previous financial years ('timing losses').

For the purposes of point (d), material pending losses shall be included in the loss data set within a time period commensurate with the size and age of the pending item.

For the purposes of point (e), the institution shall include in the loss data set material timing losses where those losses are due to operational risk events that span more than one financial year and give rise to legal risk. Institutions shall include in the recorded loss amount of the operational risk item of a financial year losses that are due to the correction of booking errors that occurred in a previous financial year, even where those losses do not directly affect third parties. Where there are material timing losses and the operational risk event affects directly third parties, including customers, providers and employees of the institution, the institution shall also include the official restatement of previously issued financial reports.

3. For the purposes of paragraph 1, the following items shall be excluded from the gross loss computation:

(a) costs of general maintenance of contracts on property, plant or equipment;

(b) internal or external expenditures to enhance the business after the operational risk losses, including upgrades, improvements, risk assessment initiatives and enhancements;

(c) insurance premiums.

4. For the purposes of paragraph 1, recoveries shall be used to reduce gross losses only where the institution has received payment. Receivables shall not be considered as recoveries.

Upon request from the competent authority, the institution shall provide all the documentation needed to perform verification of payments received and factored in the calculation of the net loss of an operational risk event.

Article 319

Loss data thresholds

1. To calculate an annual operational risk loss as required by Article 316(1), institutions shall take into account from the loss data set operational risk events with a net loss, calculated in accordance with Article 318, that are equal to or above EUR 20 000.

2. Without prejudice to paragraph 1, and for the purposes of Article 446, institutions shall also calculate the annual operational risk loss referred to in Article 316(1), taking into account from the loss data set operational risk events with a net loss, calculated in accordance with Article 318, that are equal to or above EUR 100 000.

3. In case of an operational risk event that leads to losses during more than one financial year, as referred to in Article 318(1), second subparagraph, the net loss to be taken into account for the thresholds referred to in paragraph 1 and 2 shall be the aggregated net loss.

Article 320

Exclusion of losses

1. Competent authorities may permit an institution to exclude from the calculation of the institution's annual operational risk losses exceptional operational risk events that are no longer relevant to the institution's risk profile, where all of the following conditions are fulfilled:

(a) the institution can demonstrate to the satisfaction of the competent authority that the operational risk event at the origin of those operational risk losses will not occur again;

(b) the operational risk loss is either of the following:

   (i) equal to or above 15 % of the institution's average annual operational risk loss, calculated based on the threshold referred to in Article 319(1), where the operational risk loss event refers to activities that are still part of the business indicator;

(ii) above 0 % of the institution's average annual operational risk loss, calculated based on the threshold referred to in Article 319(1), where the operational risk loss event refers to activities divested from the business indicator in accordance with Article 315(2);

(c) the operational risk loss was in the loss database for a minimum period of 1 year, unless the operational risk loss is related to activities divested from the business indicator in accordance with Article 315(2).

For the purposes of point (c), the minimum period of 1 year shall start from the date on which the operational risk event, included in the loss data set, first became greater than the materiality threshold referred to in Article 319(1).

2. An institution requesting the permission referred to in paragraph 1 shall provide the competent authority with documented justifications for the exclusion of an exceptional loss, including:

(a) a description of the operational risk event that is submitted for exclusion;

(b) proof that the loss from the operational risk event is above the materiality threshold for loss exclusion referred to in paragraph 1, point (b), including the date on which that operational risk event became greater than the materiality threshold;

(c) the date on which the operational risk event concerned would be excluded, considering the minimum retention period set out paragraph 1, point (c);

(d) the reason why the operational risk event is no longer deemed relevant to the institution's risk profile;

(e) the demonstration that there are no similar or residual legal exposures and that the operational risk event to be excluded has no relevance to other activities or products;

(f) reports of the institution's independent review or validation, confirming that the operational risk event is no longer relevant and that there are no similar or residual legal exposures;

(g) proof that competent bodies of the institution, through the institution's approval processes, have approved the request for exclusion of the operational risk event and the date of such approval;

(h) the impact of the exclusion of the operational risk event on the annual operational risk loss.

3. EBA shall develop draft regulatory technical standards to specify the conditions that the competent authority has to assess pursuant to paragraph 1, including how the average annual operational risk loss should be computed and the specifications on the information to be collected pursuant to paragraph 2 or any further information deemed necessary to perform the assessment.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 18 months after entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 321

Inclusion of losses from merged or acquired entities or activities

1. Losses stemming from merged or acquired entities or activities shall be included in the loss data set as soon as the business indicator items related to those entities or activities are included in the institution's business indicator calculation in accordance with Article 315(1). To that end, institutions shall include losses observed during a ten-year period prior to the acquisition or merger.

2. EBA shall develop draft regulatory technical standards to specify how institutions shall determine the adjustments to their loss data set following the inclusion of losses from merged or acquired entities or activities as referred to in paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 18 months after entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 322

Review of the comprehensiveness, accuracy and quality of the loss data

1. Institutions shall have in place the organisation and processes to review the comprehensiveness, accuracy and quality of the loss data independently.

2. Competent authorities shall periodically review the quality of the loss data of an institution that calculates annual operational risk losses in accordance with Article 316(1). Competent authorities shall carry out such review at least every three years for an institution with a business indicator above EUR 1 billion.

Article 323

Operational risk management framework

1. Institutions shall have in place:

(a) a well-documented assessment and management system for operational risk which is closely integrated into the day-to-day risk management processes, forms an integral part of the process of monitoring and controlling the institution's operational risk profile, and for which clear responsibilities have been assigned. The assessment and management system for operational risk shall identify the institution's exposures to operational risk and track relevant operational risk data, including material loss data;

(b) an operational risk management function that is independent from the institution's business and operational units;

(c) a system of reporting to senior management that provides operational risk reports to relevant functions within the institution;

(d) a system of regular monitoring and reporting of operational risk exposures and loss experience, and procedures for taking appropriate corrective actions;

(e) routines for ensuring compliance, and policies for the treatment of non-compliance;

(f) regular reviews of the institution’s operational risk assessment and management processes and systems, performed by internal or external auditors that possess the knowledge necessary to carry out such reviews;

(g) internal validation processes that operate in a sound and effective manner;

(h) transparent and accessible data flows and processes associated with the operational risk assessment system.

2. EBA shall develop draft regulatory technical standards to specify the obligations under paragraph 1, points (a) to (h), taking into consideration institutions’ size and complexity.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 18 months after entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

[*5] Commission Implementing Regulation (EU) 2021/451 of 17 December 2020 laying down implementing technical standards for the application of Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to supervisory reporting of institutions and repealing Implementing Regulation (EU) No 680/2014 (OJ L 97, 19.3.2021, p. 1).’;

(132) Article 325 is amended as follows:

(a) paragraphs 1 to 5 are replaced by the following:

‘1. An institution shall calculate the own funds requirements for market risk for all its trading book positions and all its non-trading book positions that are subject to foreign exchange risk or commodity risk in accordance with the following approaches:

(a) the alternative standardised approach set out in Chapter 1a;

(b) the alternative internal model approach set out in Chapter 1b for those positions assigned to trading desks for which the institution has been granted permission by competent authorities to use that alternative approach as set out in Article 325az(1);

(c) the simplified standardised approach referred to in in paragraph 2 of this Article, provided that the institution meets the conditions set out in Article 325a(1).

By way of derogation from the first subparagraph, an institution shall not calculate an own funds requirements for foreign exchange risk for trading book positions and non-trading book positions that are subject to foreign exchange risk where those positions are deducted from the institution’s own funds.

2. The own funds requirements for market risk calculated in accordance with the simplified standardised approach shall be the sum of the following own funds requirements, as applicable:

(a) the own funds requirements for position risk referred to in Chapter 2, multiplied by:

(i) 1,3, for the general and specific risks of positions in debt instruments, excluding securitisation instruments as referred to in Article 337;

(ii) 3,5, for the general and specific risks of positions in equity instruments.

(b) the own funds requirements for foreign exchange risk referred to in Chapter 3, multiplied by 1,2;

(c) the own funds requirements for commodity risk referred to in Chapter 4, multiplied by 1,9;

(d) the own funds requirements for securitisation instruments as referred to in Article 337.

3. An institution using the alternative internal model approach referred to in paragraph 1, point (b), to calculate the own funds requirements for market risk of trading book positions and non-trading book positions that are subject to foreign exchange risk or commodity risk shall report to the competent authorities the monthly calculation of the own funds requirements for market risk using the alternative standardised approach referred to in paragraph 1, point (a), for each trading desk to which those positions have been assigned to in accordance with Article 104b.

4. An institution may use a combination of the alternative standardised approaches referred to in paragraph 1, point (a), and the alternative internal model approach referred to in paragraph 1, point (b), on a permanent basis within a group. The institution shall not use either of those approaches in combination with the simplified standardised approach referred to in paragraph 1, point (c).

5. An institution shall not use the alternative internal model approach set out in paragraph 1, point (b), for instruments in their trading book that are securitisation positions or positions included in the alternative correlation trading portfolio (ACTP) set out in paragraphs 6, 7 and 8.';

(b) paragraph 9 is replaced by the following:

'9. EBA shall develop draft regulatory technical standards to specify how institutions are to calculate the own funds requirements for market risk for non-trading book positions that are subject to foreign exchange risk or commodity risk in accordance with the approaches set out in paragraph 1, points (a) and (b) of this Article, taking into account the requirements set out in Article 104b, paragraphs 5 and 6, where applicable.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 9 months after entry into force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.';

(133) Article 325a is amended as follows:

(a) the title is replaced by the following:

‘**Conditions for using the Simplified Standardised Approach**’;

(b) in paragraph 1, the first subparagraph is replaced by the following:

‘1. An institution may calculate the own funds requirements for market risk by using the simplified standardised approach referred to in Article 325(1), point (c), provided that the size of the institution's on- and off-balance-sheet business subject to market risk is equal to or less than each of the following thresholds, on the basis of an assessment carried out on a monthly basis using data as of the last day of the month:’;

(c) in paragraph 2, point (b) is replaced by the following:

‘(b) all non-trading book positions that are subject to foreign exchange risk or commodity risk shall be included, except those positions that are excluded from the calculation of own funds requirements for foreign exchange risk in accordance with Article 104c or that are deducted from the institution’s own funds’;

(d) in paragraph 5, the first subparagraph is replaced by the following:

‘5. Institutions shall cease to calculate the own funds requirements for market risk in accordance with the approach set out in Article 325(1), point (c), within three months of either of the following cases:’;

(e) paragraph 6 is replaced by the following:

‘6. An institution that has ceased to calculate the own funds requirements for market risk using the approach set out in Article 325(1), point (c), shall only be permitted to start calculating the own funds requirements for market risk using that approach where it demonstrates to the competent authority that all the conditions set out in paragraph 1 have been met for an uninterrupted full-year period.’;

(134) in Article 325b, the following paragraph 4 is added:

‘4. Where a competent authority has not granted an institution the permission referred to in paragraph 2 for at least one institution or undertaking of the group, the following requirements shall apply for the calculation of the own funds requirements for market risk on a consolidated basis in accordance with this Title:

(a) the institution shall calculate net positions and own funds requirements in accordance with this Title for all positions in institutions or undertakings of the group for which the institution has been granted the permission referred to in paragraph 2, using the treatment set out in paragraph 1;

(b) the institution shall calculate net positions and own funds requirements in accordance with this Title individually for all the positions in each institution or undertaking of the group for which the institution has not been granted the permission referred to in paragraph 2;

(c) the institution shall calculate the total own funds requirements in accordance with this Title on a consolidated basis by adding the amounts calculated in points (a) and (b) of this paragraph.

For the purposes of the calculation referred to in points (a) and (b), institutions and undertakings referred to in points (a) and (b) shall use the same reporting currency as the reporting currency used to calculate the own funds requirements for market risk in accordance with this Title on a consolidated basis for the group.';

(135) Article 325c is amended as follows:

(a) the title is replaced by the following:

'**Scope, structure of and qualitative requirements of the alternative standardised approach**'

(b) paragraph 1 is replaced by the following:

'1. Institutions shall have in place, and make available to the competent authorities, a documented set of internal policies, procedures and controls for monitoring and ensuring compliance with the requirements of this Chapter. Any changes to these policies, procedures and controls shall be notified to the competent authorities in due course.';

(c) the following paragraphs 3 to 6 are added:

'3. Institutions shall have a risk control unit that is independent from business trading units and that reports directly to senior management. That risk control unit shall be responsible for designing and implementing the alternative standardised approach. It shall produce and analyse monthly reports on the output of the alternative standardised approach, as well as the appropriateness of the institution's trading limits.

4. Institutions shall independently review the alternative standardised approach they use for the purposes of this Chapter to the satisfaction of the competent authorities, either as part of their regular internal auditing process, or by mandating a third-party undertaking to conduct that review.

For the purposes of the first subparagraph, a third-party undertaking means an undertaking that provides auditing or consulting services to institutions and that has staff that has sufficient skills in the area of market risk.

5. The review of the alternative standardised approach referred to in paragraph 4 shall cover both the activities of the business trading units and of the independent risk control unit and shall assess all of the following:

(a) the internal policies, procedures and controls for monitoring and ensuring compliance with the requirements referred to in paragraph 1;

(b) the adequacy of the documentation of the risk management system and processes and the organisation of the risk control unit referred to in paragraph 2;

(c) the accuracy of sensitivity computations and of the process used to derive these computations from the institution's pricing models that serve as a basis for reporting profit and loss to senior management, as referred to in Article 325t;

(d) the verification process that the institution employs to evaluate the consistency, timeliness and reliability of the data sources used in the calculation of the own funds requirements for market risk using the alternative standardised approach, including the independence of those data sources.

An institution shall conduct the review referred to in the first subparagraph at least once a year, or on a less frequent basis upon the approval of the competent authorities.';

(136) Article 325j is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. An institution shall calculate the own funds requirements for market risk of a position in a CIU using one of the following approaches:

(a) an institution that meets the condition set out in Article 104(7), point (a), shall calculate the own funds requirements for market risk of that position by looking through the underlying positions of the CIU, on a monthly basis, as if those positions were directly held by the institution;

(b) an institution that meets the condition set out in Article 104(7), point (b), shall calculate the own funds requirements for market risk of that position by using either of the following approaches:

(i) it shall calculate the own funds requirement for market risk of the CIU by considering the position in the CIU as a single equity position allocated to the bucket 'Other sector' in Article 325ap(1), Table 8;

(ii) it shall calculate the own funds requirement for market risk of the CIU in accordance with the limits set in the CIU's mandate and in the relevant law.

For the purposes of the calculation referred to in point (i), the institution shall consider the position in the CIU as a single unrated equity position allocated to the bucket "Unrated" in Article 325y(1), Table 2.

For the purposes of the calculation referred to in point (ii), the institution may calculate the own funds requirements for counterparty credit risk and own funds requirements for credit valuation adjustment risk of derivative positions of the CIU using the simplified approach set out in Article 132a(3).';

(b) the following paragraph 1a is inserted:

'1a. For the purposes of the approaches referred to in paragraph 1, point (b)(i) and (b)(ii), the institution shall:

(a) apply the own funds requirements for the default risk set out in Section 5 and the residual risk add-on set out in Section 4 to a position in a CIU, where the mandate of that CIU allows it to invest in exposures that shall be subject to those own funds requirements;

(b) for all positions in the same CIU, use the same approach among the approaches set out in paragraph 1, point (b), to calculate the own funds requirements on a stand-alone basis as a separate portfolio.';

(c) paragraph 4 is replaced by the following:

'4. For the purposes of paragraph 1, point (b)(ii), an institution shall determine the calculation of the own funds requirements for market risk by determining the hypothetical portfolio that would attract the highest own funds requirements in accordance with Article 325c(2), point (a), based on the CIU's mandate or relevant law, taking into account the leverage to the maximum extent, where applicable.

The institution shall use the same hypothetical portfolio as the one referred to in the first subparagraph to calculate, where applicable, the own funds requirements for the default risk set out in Section 5 and the residual risk add-on set out in Section 4 to a position in a CIU.

The methodology developed by the institution to determine the hypothetical portfolios of all positions in CIUs for which the calculations referred to in the first subparagraph are used shall be approved by its competent authority.';

(d) the following paragraphs 6 and 7 are added:

'6. Institutions that do not have adequate data or information to calculate the own funds requirements for market risk of a CIU position in accordance with the approach set out in paragraph 1, point (a), may rely on a third party to perform such calculation, provided that all the following conditions are met:

(a) the third party is one of the following:

(i) the depository institution or the depository financial institution of the CIU, provided that the CIU exclusively invests in securities and deposits all securities at that depository institution or depository financial institution;

(ii) for CIUs not covered by point (i), the CIU management company, provided that the CIU management company meets the criteria set out in Article 132(3), point (a);

(b) the third party provides the institution with the adequate data or information missing to calculate the own fund requirement for market risk of the CIU position in accordance with the approach referred to in in paragraph 1, point (a);

(c) an external auditor of the institution has confirmed the adequacy of the third party's data or information referred to in point (b) and the institution's competent authority has unrestricted access to these data and information upon request.

7. EBA shall develop draft regulatory technical standards to specify further the technical elements of the methodology to determine hypothetical portfolios for the purposes of the approach set out in paragraph 4, including the manner in which institutions shall take into account in the methodology, where applicable, leverage to the maximum extent.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 12 months after the date of entry into force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.';

(137) in Article 325q, paragraph 2 is replaced by the following:

'2. The foreign exchange vega risk factors to be applied by institutions to options with underlyings that are sensitive to foreign exchange shall be the implied volatilities of exchange rates between currency pairs. Those implied volatilities shall be mapped to the following maturities in accordance with the maturities of the corresponding options subject to own funds requirements: 0,5 years, 1 year, 3 years, 5 years and 10 years.';

(138) in Article 325s(1), the formula for s_k is replaced by the following:

' $s_k = \frac{V_i(0{,}01+vol_k,x,y)-V_i(vol_k,x,y)}{0{,}01} \cdot vol_k$ ';

(139) Article 325t is amended as follows:

(a) in paragraph 1, the second subparagraph is replaced by the following:

'By way of derogation from the first subparagraph, competent authorities may require an institution that has been granted permission to use the alternative internal model approach set out in Chapter 1b to use the pricing functions of the risk-measurement system of their internal model approach in the calculation of sensitivities under this Chapter for the purposes of the calculation and reporting requirements set out in Article 325(3).';

(b) in paragraph 5, point (a) is replaced by the following:

'(a) those alternative definitions are used for internal risk management purposes or for the reporting of profits and losses to senior management by an independent risk control unit within the institution;';

(c) in paragraph 6, point (a) is replaced by the following:

'(a) those alternative definitions are used for internal risk management purposes or for the reporting of profits and losses to senior management by an independent risk control unit within the institution;';

(140) in Article 325v, the following paragraph 3 is added:

'3. For traded non-securitisation credit and equity derivatives, JTD amounts by individual constituents shall be determined by applying a look-through approach.';

(141) in Article 325y, the following paragraph 6 is added:

'6. For the purposes of this Article, an exposure shall be assigned the credit quality category corresponding to the credit quality category that it would be assigned under the Standardised Approach for credit risk set out in Title II, Chapter 2.';

(142) in Article 325ab, paragraph 2 is deleted.

(143) in Article 325ae, paragraph 3 is replaced by the following:

'3. The risk weights of risk factors based on the currencies included in the most liquid currency sub-category as referred to in Article 325bd(7), point (b), and the domestic currency of the institution shall be the following:

(a) for risk-free rate risk factors, the risk weights referred to in paragraph 1, Table 3 divided by $\sqrt{2}$;

(b) for inflation risk factor and cross currency basis risk factors, the risk weights referred to in paragraph 2 divided by $\sqrt{2}$.';

(144) Article 325ah is amended as follows:

(a) paragraph 1 is amended as follows:

(i) in Table 4, the sector of bucket 13 is replaced by the following:

‘Financial sector entities including credit institutions incorporated or established by a central government, a regional government or a local authority, promotional lenders and covered bonds.’;

(ii) the following subparagraph is added:

‘For the purposes of this Article, an exposure shall be assigned the credit quality category corresponding to the credit quality category that it would be assigned under the Standardised Approach for credit risk set out in Title II, Chapter 2.’;

(b) the following paragraph 3 is added:

‘3. By way of derogation from paragraph 2, institutions may assign a risk exposure of an unrated covered bond to bucket 4 where the institution that issued the covered bond has a credit quality step 1 to 3.’;

(145) in Article 325ai(1), the definition of the term ρkl (name) is replaced by the following:

‘ρ_{kl} (name) shall be equal to 1 where the two names of sensitivities k and l are identical; it shall be equal to 35 % where the two names of sensitivities k and l are in buckets 1 to 18 in Article 325ah(1), Table 4, otherwise it shall be equal to 80 %’;

(146) in Article 325aj, the definition of γbc (rating) is replaced by the following:

‘γ_{bc} (rating) shall be equal to:

(a) 1, where buckets b and c are buckets 1 to 17 and both buckets have the same credit quality category (either ‘credit quality step 1 to 3’ or ‘credit quality step 4 to 6’); otherwise it shall be equal to 50 %; for the purposes of that calculation, bucket 1 shall be considered as belonging to the same credit quality category as buckets that have credit quality step 1 to 3

(b) 1, where either bucket b or c is bucket 18;

(c) 1, where bucket b or c is bucket 19 and the other bucket has credit quality step 1 to 3; otherwise it shall be equal to 50 %;

(d) 1, where bucket b or c is bucket 20 and the other bucket has credit quality step 4 to 6; otherwise it shall be equal to 50 %;’;

(147) Article 325ak is amended as follows:

in the first paragraph, (a) in Table 6, the sector of bucket 13 is replaced by the following:

‘Financial sector entities including credit institutions incorporated or established by a central government, a regional government or a local authority, promotional lenders and covered bonds’;

(b) the following paragraphs are added:

‘For the purposes of this Article, an exposure shall be assigned the credit quality category corresponding to the credit quality category that it would be assigned under the Standardised Approach for credit risk set out in Title II, Chapter 2.

By way of derogation from the second paragraph, institutions may assign a risk exposure of an unrated covered bond to bucket 4 where the institution that issues the covered bond has a credit quality step 1 to 3.';

(148) in Article 325am(1), the following paragraph 3 is added:

'3. For the purposes of this Article, an exposure shall be assigned the credit quality category corresponding to the credit quality category that it would be assigned under the Standardised Approach for credit risk set out in Title II, Chapter 2.';

(149) in Article 325as, Table 9 is amended as follows:

(a) the bucket name of bucket 3 is replaced by the following:

'Energy - electricity';

(b) the following field is inserted:

3a	Energy – carbon trading	40 %

';

(150) Article 325ax is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

'1. Buckets for vega risk factors shall be similar to the buckets established for delta risk factors in accordance with, this Chapter, Section 3, Subsection 1.

2. Risk weights for sensitivities to vega risk factors shall be assigned in accordance with the risk class of the risk factors, as follows:

Table 11

Risk class	Risk weights
GIRR	100%
CSR non-securitisations	100%
CSR securitisations (ACTP)	100%
CSR securitisations (non-ACTP)	100%
Equity (large cap and indices)	77,78%
Equity (small cap and other sector)	100%

Commodity	100%
Foreign exchange	100%

(b) paragraph 3 is deleted.';

(151) Article 325az is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The alternative internal model approach may be used by an institution to calculate its own funds requirements for market risk provided that the institution meets all the requirements set out in this Chapter.';

(c) paragraph 2, first subparagraph, is amended as follows:

(i) points (c) and (d) are replaced by the following:

'(c) the trading desks have met the back-testing requirements referred to in Article 325bf(3);

(d) the trading desks have met the profit and loss attribution ('P&L attribution') requirements referred to in Article 325bg;';

(ii) the following point (g) is added:

'(g) no positions in CIUs that meet the condition set out in Article 104(7), point (b), have been assigned to the trading desks.';

(c) paragraph 3 is replaced by the following:

'3. Institutions that have received the permission to use the alternative internal model approach shall also meet the reporting requirement set out in Article 325(3).';

(d) paragraph 9, first subparagraph, is amended as follows:

(i) point (b) is replaced by the following:

'(b) to limit the calculation of the add-on to that resulting from overshootings under the back-testing of hypothetical changes as referred to in Article 325bf(6);';

(ii) the following point (c) is added:

'(c) to exclude the overshootings evidenced by the back-testing of hypothetical or actual changes from the calculation of the add-on as referred to in Article 325bf(6);';

(152) in Article 325ba, the following paragraph 3 is added:

'3. An institution using an alternative internal model shall calculate the total own funds requirements for market risk for all trading book positions and all non-trading book positions generating foreign exchange or commodity risks in accordance with the following formula:

$$AIMA_{total} = \min(AIMA + PLA_{addon} + ASA_{non-aima} ; ASA_{all\ portfolio}) + \max(AIMA - ASA_{aima} ; 0)$$

where:

$AIMA$ = the sum of the own funds requirements referred in to paragraphs 1 and 2;

PLA_{addon} = the additional own funds requirement referred in to Article 325bg(2);

$ASA_{all\ portfolio}$ = the own funds requirements for market risk as calculated under the alternative standardised approach referred to in Article 325(1), point (a), for the portfolio of all trading book positions and all non-trading book positions generating foreign exchange or commodity risks;

$ASA_{non-aima}$ = the own funds requirements for market risk as calculated under the alternative standardised approach referred to in Article 325(1), point (a), for the portfolio of trading book positions and non-trading book positions generating foreign exchange or commodity risks for which the institution used the same approach to calculate the own funds requirements for market risk;

AS = the own funds requirements for market risk as calculated under the alternative standardised approach referred to in Article 325(1), point (a), for the portfolio of trading book positions and non-trading book positions generating foreign exchange or commodity risks for which the institution used the approach referred to in Article 325(1), point (b) to calculate the own funds requirements for market risk;

(153) in Article 325bc, the following paragraph 6 is added:

‘6. EBA shall develop draft regulatory technical standards to specify the criteria for the use of data inputs in the risk-measurement model referred to in this Article, including criteria on data accuracy and criteria on the calibration of the data inputs where market data is insufficient.

EBA shall submit those draft regulatory technical standards to the Commission by [9 months after the entry in force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.’

(154) Article 325be is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

‘For the purposes of the assessment referred to in paragraph 1, competent authorities may allow institutions to use market data provided by third-party vendors.’;

(b) the following paragraph 1a is inserted:

‘1a. Competent authorities may require an institution to consider not modellable a risk factor that has been assessed as modellable by the institution in accordance with paragraph 1, where the data inputs used to determine the scenarios of future shocks applied to the risk factor do not meet, to the satisfaction of the competent authorities, the requirements referred to in Article 325bc(6).’;

(c) the following paragraph 2a is inserted:

‘2a. In extraordinary circumstances, occurring during periods of significant reduction in certain trading activities across financial markets, competent authorities may allow all institutions using the approach set out in this Chapter to consider as modellable some risk factors that have been assessed as not modellable by these institutions in accordance with paragraph 1, provided that the following conditions are fulfilled:

(a) the risk factors subject to the treatment correspond to the trading activities which are significantly reduced across financial markets;

(b) the treatment is applied temporarily, and not for more than six months within one financial year;

(c) the treatment referred to in the first subparagraph does not significantly reduce the total own funds requirements for market risk of the institutions applying it;

(d) competent authorities immediately notify EBA of any decision to allow institutions to apply the approach set out in this Chapter to consider as modellable some risk factors that have been assessed as non-modellable, as well as of the trading activities concerned, and substantiate that decision.';

(d) paragraph 3 is replaced by the following:

'3. EBA shall develop draft regulatory technical standards to specify the criteria to assess the modellability of risk factors in accordance with paragraph 1, including where market data referred to in paragraph 2b are used, and the frequency of that assessment.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert date = 9 months after the date of entry into force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.';

(155) Article 325bf is amended as follows:

(a) paragraph 6 is amended as follows:

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

'The multiplication factor (mc) shall be equal to at least the sum of 1,5 and an add-on determined in accordance with Table 3. For the portfolio referred to in paragraph 5, the add-on shall be calculated on the basis of the number of overshootings that occurred over the most recent 250 business days as evidenced by the institution's back-testing of the value-at-risk number calculated in accordance with point (a) of this subparagraph. The calculation of the add-on shall be subject to the following requirements:';

(ii) the last subparagraph is replaced by the following:

'In extraordinary circumstances, competent authorities may permit an institution to:

(a) limit the calculation of the add-on to that resulting from overshootings under the back-testing of hypothetical changes where the number of overshootings under the back-testing of actual changes does not result from deficiencies in the institution’s alternative internal model;

(b) exclude the overshootings evidenced by the back-testing of hypothetical or actual changes from the calculation of the add-on where those overshootings do not result from deficiencies in the institution’s alternative internal model.’;

(iii) the following subparagraph is added:

‘For the purposes of the first subparagraph, competent authorities may increase the value of mc above the sum referred to in that subparagraph, where an institution’s alternative internal model shows deficiencies to appropriately measure the own funds requirements for market risk.’;

(b) paragraph 8 is replaced by the following:

‘8. By way of derogation from paragraphs 2 and 6 of this Article, competent authorities may permit an institution not to count an overshooting where a one-day change in the value of its portfolio that exceeds the related value-at-risk number calculated by that institution's internal model is attributable to a non-modellable risk factor.’

(c) the following paragraph 10 is added:

’10. EBA shall develop draft regulatory technical standards to specify the conditions and the criteria according to which an institution may be allowed not to count an overshooting where the one-day change in the value of its portfolio that exceeds the related value-at-risk number calculated by that institution's internal model is attributable to a non-modellable risk factor.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert date = 18 months after the date of entry into force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

(156) Article 325bg is amended as follows:

(a) paragraphs 1 to 3 are replaced by the following:

‘1. An institution's trading desk meets the P&L attribution requirements where the theoretical changes in the value of that trading desk's portfolio, based on the institution's risk-measurement model, are either close or sufficiently close to the hypothetical changes in the value of that trading desk's portfolio, based on the institution's pricing model.

2. Notwithstanding paragraph 1, where the theoretical changes in the value of a trading desk's portfolio, based on the institution's risk-measurement model are sufficiently close to the hypothetical changes in the value of that trading desk's portfolio, based on the institution's pricing model, the institution shall calculate, for all the positions assigned to that trading desk, an additional own funds requirement to the own funds requirements referred to in Article 325ba, paragraphs 1 and 2.

3. For each position of a given trading desk, an institution's compliance with the P&L attribution requirement as referred in to paragraph 1 shall lead to the identification of a precise list of risk factors that are deemed appropriate for verifying the institution's compliance with the back-testing requirement set out in Article 325bf.';

(b) paragraph 4 is amended as follows:

(i) points (a) and (b) are replaced by the following:

'(a) the criteria specifying whether the theoretical changes in the value of a trading desk's portfolio are either close or sufficiently close to the hypothetical changes in the value of a trading desk's portfolio for the purposes of paragraph 1, taking into account international regulatory developments;

(b) the additional own funds requirement referred to in paragraph 2;';

(ii) point (e) is deleted;

(iii) the last two subparagraphs are replaced by the following:

EBA shall submit those draft regulatory technical standards to the Commission by [9 months after the entry in force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.';

(157) Article 325bh is amended as follows:

(a) in paragraph 1, the following point (i) is added:

'(i) for positions in CIUs, institutions shall look through the underlying positions of the CIUs at least on a weekly basis to calculate their own funds requirements in accordance with this Chapter; institutions that do not have adequate data inputs or information to calculate the own fund requirement for market risk of a CIU position in accordance with the look-through approach may rely on a third party to obtain those data inputs or information, provided that all the following conditions are met:

(i) the third party is one of the following:

– the depository institution or the depository financial institution of the CIU, provided that the CIU exclusively invests in securities and deposits all the securities at that depository institution or depository financial institution;

– for CIUs not covered by the first indent of this point(i), the CIU management company, provided that the CIU management company meets the criteria set out in Article 132(3), point (a).

(ii) the third party provides the institution with the adequate data inputs or information to calculate the own funds requirement for market risk of the CIU position in accordance with the approach referred to in the first subparagraph;

(iii) an external auditor of the institution has confirmed the adequacy of the third party's data or information referred to in point (ii) and the institution's competent authority has unrestricted access to these data and information upon request.';

(b) paragraph 2 is replaced by the following:

'2. An institution may use empirical correlations within broad categories of risk factors and, for the purpose of calculating the unconstrained expected shortfall measure UESt as referred to in Article 325bb(1) across broad categories of risk factors only where the institution's approach for measuring those correlations is sound, consistent with either the applicable liquidity horizons or, upon the satisfaction of the institution's competent authority, with the base time horizon of 10 days set out in Article 325bc(1) and implemented with integrity.';

(c) paragraph 3 is deleted;

(158) in Article 325bi(1), point (b) is amended as follows:

'(b) an institution shall have a risk control unit that is independent from business trading units and that reports directly to senior management. That unit shall:

(i) be responsible for designing and implementing any internal risk-measurement model used in the alternative internal model approach for the purposes of this Chapter;

(ii) be responsible for the overall risk management system;

(iii) produce and analyse daily reports on the output of any internal model used to calculate capital requirements for market risks, and on the appropriateness of measures to be taken in terms of trading limits.

A separate validation unit from the risk control unit shall conduct the initial and ongoing validation of any internal risk-measurement model used in the alternative internal model approach for the purposes of this Chapter.';

(159) Article 325bp is amended as follows:

(a) paragraph 5 is amended as follows:

(i) points (d) and (e) are replaced by the following:

'(d) an institution that has been granted permission to estimate default probabilities in accordance with Title II, Chapter 3, Section 1 for the exposure class and the rating system corresponding to a given issuer shall use the methodology set out therein to calculate the default probabilities of that issuer, provided that data for such estimation are available;

(e) an institution that has not been granted permission to estimate default probabilities referred to in point (d) shall develop an internal methodology or use external sources to estimate these default probabilities consistently with the requirements applying to estimates of default probability under this Article.';

(ii) the following subparagraph is added:

'For the purposes of point (d), the data to perform the estimation of the default probabilities of a given issuer of a trading book position are available where, at the calculation date, the institution has a non-trading book position on the same obligor for which it estimates default probabilities in accordance with Title II, Chapter 3, Section 1 to calculate its own funds requirements set out in that Chapter.';

(b) paragraph 6 is amended as follows:

(i) points (c) and (d) are replaced by the following:

‘(c) an institution that has been granted permission to estimate loss given default in accordance with Title II, Chapter 3, Section 1 for the exposure class and the rating system corresponding to a given exposure shall use the methodology set out therein to calculate loss given default estimates of that issuer, provided that data for such estimation are available;

(d) an institution that has not been granted permission to estimate loss given default referred to in point (c) shall develop an internal methodology or use external sources to estimate loss given default consistently with the requirements applying to estimates of loss given default under this Article.’;

(ii) the following subparagraph is added:

‘For the purposes of point (c), the data to perform the estimation of the loss given default a given issuer of a trading book position are available where, at the calculation date, the institution has a non-trading book position on the same exposure for which it estimates loss given default in accordance with Title II, Chapter 3, Section 1 to calculate its own funds requirements set out in that Chapter.’;

(160) in Article 337, paragraph 2 is replaced by the following:

‘2. When determining risk weights for the purposes of paragraph 1, institutions shall use exclusively the approach set out in Title II, Chapter 5, Section 3.’;

(161) in Article 338, paragraphs 1 and 2 are replaced by the following:

‘1. For the purposes of this Article, an institution shall determine its correlation trading portfolio in accordance with the provisions set out in Article 325, paragraphs 6, 7 and 8.

2. An institution shall determine the larger of the following amounts as the specific risk own funds requirement for the correlation trading portfolio:

(a) the total specific risk own funds requirement that would apply just to the net long positions of the correlation trading portfolio;

(b) the total specific risk own funds requirement that would apply just to the net short positions of the correlation trading portfolio.’;

(162) in Article 352, paragraph 2 is deleted;

(163) in Article 361, point (c) and the last paragraph are deleted;

(164) in Part Three, Title IV, Chapter 5 is deleted;

(165) in Article 381 , the following paragraph is added:

‘For the purposes of this Title, ‘CVA risk’ means the risk of losses arising from changes in the value of CVA, calculated for the portfolio of transactions with a counterparty as set out in the first paragraph, due to movements in a counterparty’s credit spreads risk factors and in other risk factors embedded in the portfolio of transactions.’;

(166) Article 382 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. An institution shall include in the calculation of own funds required by paragraph 1 securities financing transactions that are fair-valued under the accounting framework applicable to the institution where the institution's CVA risk exposures arising from those transactions are material.’;

(b) the following paragraphs 4a and 4b are inserted:

‘4a. By way of derogation from paragraph 4, an institution may choose to calculate an own funds requirements for CVA risk, using any of the applicable approaches referred to in Article 382a, for those transactions that are excluded in accordance with paragraph 4, where the institution uses eligible hedges determined in accordance with Article 386 to mitigate the CVA risk of those transactions. Institutions shall establish policies to specify where they choose to satisfy their own funds requirements for CVA risk for such transactions.

4b. Institutions shall report to their competent authorities the results of the calculations of the own funds requirements for CVA risk for all the transactions referred to in paragraph 4. For the purposes of that reporting requirement, institutions shall calculate the own funds requirements for CVA risk using the relevant approaches set out in Article 382a(1), that they would have used to satisfy an own funds requirement for CVA risk if those transactions were not excluded from the scope in accordance with paragraph 4.’

(c) the following paragraph 6 is added:

‘6. EBA shall develop draft regulatory technical standards to specify the conditions and the criteria that the competent authorities shall use to assess whether the CVA risk exposures arising from fair-valued securities financing transactions are material, as well as the frequency of that assessment.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert the date = 2 years after the entry into force of this Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/ 2010.’;

(167) the following Article 382a is inserted:

‘Article 382a

Approaches for calculating the own funds requirements for CVA risk

1. An institution shall calculate the own funds requirements for CVA risk for all the transactions referred to in Article 382 in accordance with the following approaches:

(a) the standardised approach set out in Article 383, where the institution has been granted permission to use that approach by the competent authorities;

(b) the basic approach set out in Article 384;

(c) the simplified approach set out in Article 385, provided that the institution meets the conditions set out in paragraph 1 of that Article.

2. An institution shall not use the approach referred to in paragraph 1, point (c), in combination with the approaches referred to in paragraph 1, points (a) or (b).

3. An institution may use a combination of the approaches referred to in paragraph 1, points (a) and (b), to calculate the own funds requirements for CVA risk on a permanent basis in the following situations:

(a) for different counterparties;

(b) for different eligible netting sets with the same counterparty;

(c) for different transactions of the same eligible netting set, provided that the following conditions are met:

(i) the institution shall split the netting set into two hypothetical netting sets, and allocate all the transactions subject to the approach referred to in paragraph 1, point (a), to the same hypothetical netting set and all the transactions subject to the approach referred to in paragraph 1, point (b) to the other hypothetical netting set to calculate to the own funds requirements for CVA risk;

(ii) the split referred to in point (a) shall be consistent with the manner in which the institution determines the legal netting of the CVA calculated for accounting purposes;

(iii) the permission granted by competent authorities to use the approach referred to in paragraph 1, point (a), shall be limited to the hypothetical netting set for which the institution uses the approach referred to in paragraph 1, point (a), to calculate to the own funds requirements for CVA risk.

Institutions shall establish policies to explain how they use a combination of the approaches referred to in paragraph 1, points (a) and (b), and as set out in this paragraph, to calculate the own funds requirements for CVA risk on a permanent basis.';

(168) Article 383 is replaced by the following:

'Article 383

Standardised approach

1. Competent authorities shall grant an institution permission to calculate its own funds requirements for CVA risk for a portfolio of transactions with one or more counterparties by using the standardised approach in accordance with paragraph 3, after having assessed whether the institution complies with the following requirements:

(a) the institution has established a distinct unit which is responsible for the institution's overall risk management and hedging of CVA risk;

(b) for each counterparty concerned, the institution has developed a regulatory CVA model to calculate the CVA of that counterparty in accordance with Article 383a;

(c) for each counterparty concerned, the institution is able to calculate, at least on a monthly basis, the sensitivities of its CVA to the risk factors concerned as determined in accordance with Article 383b;

(d) for all positions in eligible hedges recognised in accordance with Article 386 for the purposes of calculating the institution's own funds requirements for CVA risk using the standardised approach, the institution is able to calculate, and at least on a monthly basis, thee sensitivities of those positions to the relevant risk factors determined in accordance with Article 383b.

For the purposes of point (c), the sensitivity of a counterparty's CVA to a risk factor means the relative change in the value of that CVA, as a result of a change in the value of one of the relevant risk factors of that CVA, calculated using the institution's regulatory CVA model in accordance with Articles 383i to 383j.

For the purposes of point (d), the sensitivity of a positions in an eligible hedge to a risk factor means the relative change in the value of that position, as a result of a change in the value of one of the relevant risk factors of that position, calculated using the institution's pricing model in accordance with Articles 383i to 383j.

2. For the purposes of calculating the own funds requirements for CVA risk, the following definitions shall apply:

(a) 'risk class' means any of the following categories:

(i) interest rate risk;

(ii) counterparty credit spread risk;

(iii) reference credit spread risk;

(iv) equity risk;

(v) commodity risk;

(vi) foreign exchange risk;

(b) 'CVA portfolio' means the portfolio composed of the aggregate CVA and all the eligible hedges referred to in paragraph 1, point (d);

(c) 'aggregate CVA' means the sum of the CVAs calculated using the regulatory CVA model for all counterparties referred to in paragraph 1, first subparagraph.

3. Institutions shall determine the own funds requirements for CVA risk using the standardised approach as the sum of the following two own funds requirements calculated in accordance with Article 383b:

(a) the own funds requirements for delta risk which capture the risk of changes in the institution's CVA portfolio due to movements in the relevant non-volatility related risk factors;

(b) the own funds requirements for vega risk which capture the risk of changes in the institution's CVA portfolio due to movements in the relevant volatility related risk factors.';

(169) the following Articles 383a to 383w are inserted:

'Article 383a

Regulatory CVA model

1. A regulatory CVA model used for the calculation of the own funds requirements for CVA risk in accordance with Article 384 shall be conceptually sound, shall be implemented with integrity, and shall comply with all of the following requirements:

(a) the regulatory CVA model shall be capable of modelling the CVA of a given counterparty, recognising netting and margin agreement at netting set level, where relevant, in accordance with this Article;

(b) the institution estimates the counterparty's probabilities of default referred to in point (a) from the counterparty's credit spreads and market-convention loss-given-default for that counterparty.

(c) the expected loss-given-default referred to in point (a) shall be the same as the market-convention loss-given-default referred to in point (b), unless the institution can justify that the seniority of the portfolio of transactions with that counterparty differs from the seniority of senior unsecured bonds issued by that counterparty;

(d) at each future time point, the simulated discounted future exposure of the portfolio of transactions with a counterparty is calculated with an exposure model by repricing all the transactions in that portfolio, based on the simulated joint changes of the market risk factors that are material to those transactions using an appropriate number of scenarios, and discounting the prices to the date of calculation using risk-free interest rates;

(d) the regulatory CVA model is capable of modelling significant dependency between the simulated discounted future exposure of the portfolio of transactions with the counterparty's credit spreads;

(e) where the transactions of the portfolio are included in a netting set subject to a margin agreement and daily mark-to-market valuation, the collateral posted and received as part of that agreement is recognised as a risk mitigant in the simulated discounted future exposure, where all of the following conditions are met:

  (i) the institution determines the relevant margin period of risk relevant for that netting set in accordance with the requirements set out in Article 285, paragraphs 2 and 5, and reflects that margin period in the calculation of the simulated discounted future exposure;

  (ii) all the applicable features of the margin agreement, including the frequency of margin calls, the type of contractually eligible collateral, the threshold amounts, the minimum transfer amounts, the independent amounts and the initial margins for both the institution and the counterparty are appropriately reflected in the calculation of the simulated discounted future exposure;

  (iii) the institution has established a collateral management unit that complies with the Article 287 for all the collateral recognised for the calculation of the own funds requirements for CVA risk using the standardised approach.

For the purposes of point (a), CVA shall have a positive sign and shall be calculated as a function of the counterparty's expected loss-given-default, an appropriate set of the counterparty's probabilities of default at future time points and an appropriate set of simulated discounted future exposures of the portfolio of transactions with that counterparty at future time points until the maturity of the longest transaction in that portfolio.

For the purposes of point (b), where the credit default swap spreads of the counterparty are observable in the market, an institution shall use those spreads. Where such credit default swap spreads are not available, an institution shall use one of the following approaches:

(i) credit spreads from other instruments issued by the counterparty reflecting current market conditions;

(ii) proxy spreads that are appropriate considering to the rating, industry and region of the counterparty.

For the purposes of the justification referred to point (d), collateral received from the counterparty shall not change the seniority of the exposure.

For the purposes of point (f)(iii), where the institution has already established such unit for using the internal model method referred to in Article 283, the institution shall not be required to establish an additional collateral management unit where that institution demonstrates to its competent authorities that such unit complies with the requirements set out in Article 287 for all the collateral recognised for calculating the own funds requirements for CVA risks using the standardised approach.

2. An institution using a regulatory CVA model shall comply with all the following qualitative requirements:

(a) the exposure model referred to in paragraph 1, point (d), is part of the institution's internal CVA risk management system that includes the identification, measurement, management, approval and internal reporting of CVA and CVA risk for accounting purposes;

(b) the institution shall have a process in place for ensuring compliance with a documented set of internal policies, controls, assessment of model performance and procedures concerning the exposure model referred to in paragraph 1, point (d);

(c) the institution shall have an independent control unit that is responsible for the effective initial and ongoing validation of the exposure model referred to in paragraph 1, point (d). This unit shall be independent from business credit and from trading units, including the unit referred to in Article 383(1), point (a), and shall report directly to senior management; it shall have a sufficient number of staff with a level of skills that is appropriate to fulfil this purpose;

(d) the institution's senior management shall be actively involved in the risk control process and shall regard CVA risk control as an essential aspect of the business, to which appropriate resources need to be devoted;

(e) the institution shall document the process for initial and ongoing validation of its exposure model referred to in paragraph 1, point (d), to a level of detail that would enable a third party to understand how the models operate, their limitations, and their key assumptions, and recreate the analysis. This documentation shall set out the minimum frequency with which ongoing validation will be conducted, as well as other circumstances (such as a sudden change in market behaviour) under which additional validation shall be conducted; it shall describe how the validation is conducted with respect to data flows and portfolios, what analyses are used and how representative counterparty portfolios are constructed;

(f) the pricing models used in the exposure model referred to in paragraph 1, point (a), for a given scenario of simulated market risk factors shall be tested against appropriate independent benchmarks for a wide range of market states as part of the initial and ongoing model validation process. Pricing models for options shall account for the non-linearity of option value with respect to market risk factors;

(g) an independent review of the institution’s internal CVA risk management system referred to in point (a) of this paragraph shall be carried out by the institution’s internal auditing process on a regular basis. This review should include both the activities of the unit referred to in Article 383(1), point (a), and of the independent risk control unit referred to in point (c) of this paragraph;

(h) the model used by the institution for calculating the simulated discounted future exposure referred to in paragraph 1, point (a), shall reflect transaction terms and specifications and margin arrangements in a timely, complete, and conservative fashion. The terms and specifications shall reside in a secure database subject to formal and periodic audit. The transmission of transaction terms and specifications data and margin arrangements to the exposure model shall also be subject to internal audit, and formal reconciliation processes shall be in place between the internal model and source data systems to verify on an ongoing basis that transaction terms, specifications and margin arrangements are being reflected in the exposure system correctly or, at least, conservatively;

(i) the current and historical market data inputs used in the model used by the institution for calculating the simulated discounted future exposure referred to in paragraph 1, point (a), shall be acquired independently of the lines of business. They shall be fed into the model used by the institution for calculating the simulated discounted future exposure referred to in paragraph 1, point (a), in a timely and complete fashion, and maintained in a secure database subject to formal and periodic audit. An institution shall have a well-developed data integrity process to handle inappropriate data observations. In the case where the model relies on proxy market data, an institution shall design internal policies to identify suitable proxies and shall demonstrate empirically on an ongoing basis that the proxies provide a conservative representation of the underlying risk;

(j) the exposure model shall capture the transaction specific and contractual information necessary to be able to aggregate exposures at the level of the netting set. An institution shall verify that transactions are assigned to the appropriate netting set within the model.

For the purposes of the calculation of the own funds requirement for CVA risks referred to in point (a), the exposure model may have different specifications and assumptions in order to meet all the requirements set out in Article 383a, except that its market input data and netting recognition shall remain the same as the ones used for accounting purposes.

3. EBA shall develop draft regulatory technical standards to specify how proxy spreads referred to in paragraph 1, point (b)(ii), are to be determined by the institution for the purposes of calculating default probabilities.

4. EBA shall develop draft regulatory technical standards to specify:

(a) further technical elements that institution shall take into account when calculating the counterparty's expected loss-given-default, the counterparty's probabilities of default and the simulated discounted future exposure of the portfolio of transactions with that counterparty and CVA, as referred to in paragraph 1, point (a);

(b) which other instruments referred to in paragraph 1, point (b)(i), are appropriate to estimate the counterparty's probabilities of default and how institutions shall perform this estimation.

EBA shall submit those draft regulatory technical standards referred to in paragraphs 3 and 4 to the Commission by [OP please insert date = 24 months after the date of entry into force of that Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

4. EBA shall develop draft regulatory technical standards to specify:

(a) the conditions for assessing the materiality of extensions and changes to the use of the standardised approach as referred to in Article 383(3);

(b) the assessment methodology under which competent authorities shall verify an institution's compliance with the requirements set out in Articles 383 and 383a.

EBA shall submit those draft regulatory technical standards to the Commission 36 *months* [after the entry into force of that Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 383b

Own funds requirements for delta and vega risks

1. Institutions shall apply the delta and vega risk factors described in Articles 383c to 383h, and the process set out in paragraphs 2 to 8, to calculate the own funds requirements for delta and vega risks.

2. For each risk class referred to in Article 383(2), the sensitivity of the aggregate CVAs and the sensitivity of all the positions in eligible hedges falling within the scope of the own funds requirements for delta or vega risks to each of the applicable delta or vega risk factors included in that risk class shall be calculated by using the corresponding formulas laid down in Articles 383i and 383j. Where the value of an instrument depends on several risk factors, the sensitivity shall be determined separately for each risk factor.

For the calculation of the vega risk sensitivities of the aggregate CVAs, sensitivities both to volatilities used in the exposure model to simulate risk factors and to volatilities used to reprice option transactions in the portfolio with the counterparty shall be included.

By way of derogation from paragraph 1, subject to the permission of the competent authorities, an institution may use alternative definitions of delta and vega risk sensitivities in the calculation of the own funds requirements of a trading book position under this Chapter, provided that the institution meets all the following conditions:

(a) those alternative definitions are used for internal risk management purposes and for the reporting of profits and losses to senior management by an independent risk control unit within the institution;

(b) the institution demonstrates that those alternative definitions are more appropriate for capturing the sensitivities of the position than the formulas set out in Articles 383i and 383j, and that the resulting sensitivities do not materially differ from those formulas.

3. Where an eligible hedge is an index instrument, institutions shall calculate the sensitivities of that eligible hedge to all the relevant risk factors by applying the shift of one of the relevant risk factor to each of the index constituents.

4. An institution may introduce additional risk classes to the ones referred to in Article 383(2) that correspond to qualified index instruments. For the purposes of delta risks, an index instrument shall be considered to be qualified where it meets the conditions set out in Article 325i(3). For vega risks, all index instruments shall be considered qualified.

An institution shall calculate delta and vega sensitivities to a qualified index risk factor as a single sensitivity to the underlying qualified index. Where 75% of the constituents of a qualified index are mapped to the same sector as set out in Articles 383o, 383r and 383t, the institution shall map the qualified index to that same sector. Otherwise, the institution shall map the sensitivity to the applicable qualified index bucket.

5. The weighted sensitivities of the aggregate CVA and of the market value of all eligible hedges to each risk factor shall be calculated by multiplying the respective net sensitivities by the corresponding risk weight, in accordance with the following formulae:

$$WS_k^{CVA} = RW_k \cdot S_k^{CVA}$$

$$WS_k^{hedges} = RW_k \cdot S_k^{hedges}$$

where:

k = the index that denotes the risk factor k;

RW_k = the risk weight applicable to the risk factor k;

WS_k^{CVA} = the weighted sensitivity of the aggregate CVA to risk factor k;

S_k^{CVA} = the net sensitivity of the aggregate CVA to risk factor k;

WS_k^{hedges} = the weighted sensitivity of the market value of all the eligible hedges in the CVA portfolio to risk factor k;

S_k^{hedges} = the net sensitivity of the market value of all the eligible hedges in the CVA portfolio to risk factor k.

6. Institutions shall calculated the net weighted sensitivity WS_k of the CVA portfolio to risk factor k in accordance with the following formula:

$$WS_k = WS_k^{CVA} - WS_k^{hedges}$$

7. The net weighted sensitivities within the same bucket shall be aggregated in accordance with the following formula, using the corresponding correlations ρ_{kl} for weighted sensitivities within the same bucket set out in Articles 383l, 383s and 383p giving rise to the bucket-specific sensitivity K_b:

$$K_b = \sqrt{\sum_{k} WS_k^2 + \sum_{k \epsilon b} \sum_{l \epsilon b, k \neq l} \rho_{kl} WS_k WS_l + R \cdot \sum_{k \epsilon b} \left(\left(WS_k^{hedges} \right)^2 \right)}$$

where:

K_b = the bucket-specific sensitivity of bucket b;

ρ_{kl} = the corresponding intra-bucket correlation parameters;

R = the hedging disallowance parameter equal to 0.01;

WS_k = the net weighted sensitivities.

8. The bucket-specific sensitivity shall be calculated in accordance with paragraphs 5, 6 and 7 for each bucket within a risk class. Once the bucket-specific sensitivity has been calculated for all buckets, weighted sensitivities to all risk factors across buckets shall be aggregated in accordance with the following formula, using the corresponding correlations γ_{bc} for weighted sensitivities in different buckets set out in Articles 383l, 383 and 383q, giving rise to the risk-class specific own funds requirements for delta or vega risk:

$$Risk\ -\ class\ specific\ own\ funds\ requirement\ for\ delta\ or\ vega\ risk = m_{CVA} \sqrt{\sum_{b} K_b^2 + \sum_{b} \sum_{b \neq c} \gamma_{bc} S_b S_c}$$

where:

m_{CVA} = a multiplier factor which is equal to 1; competent authorities may increase the value of m_{CVA} where the institution's regulatory CVA model shows deficiencies to appropriately measure the own funds requirements for CVA risk;

K_b = the bucket-specific sensitivity of bucket b;

γ_{bc} = the correlation parameter between buckets b and c;

$S_b = max\{-K_b; min(\sum_{k \in b} WS_k\ ; K_b)\}$ for all risk factors in bucket b;

$S_c = max\{-K_c; min(\sum_{k \in b} WS_k\ ; K_c)\}$ for all risk factors in bucket c.

Article 383c

Interest rate risk factors

1. For the interest rate delta risk factors, including inflation rate risk, there shall be one bucket per currency, with each bucket containing different types of risk factors.

The interest rate delta risk factors that are applicable to interest-rate sensitive instruments in the CVA portfolio shall be the risk-free rates per currency concerned and per each of the following maturities: 1 year, 2 years, 5 years, 10 years and 30 years.

The interest rate delta risk factors applicable to inflation-rate sensitive instruments in the CVA portfolio shall be the inflation rates per currency concerned and per each of the following maturities: 1 year, 2 years, 5 years, 10 years and 30 years.

2. The currencies for which an institution shall apply the interest rate delta risk factors in accordance with paragraph 1 shall be USD, EUR, GBP, AUD, CAD, SEK, JPY and the institution's reporting currency.

3. For currencies not specified in paragraph 2, the interest rate delta risk factors shall be the absolute change of the inflation rate and the parallel shift of the entire risk-free curve for a given currency.

4. Institutions shall obtain the risk-free rates per currency from money market instruments held in their trading book that have the lowest credit risk, including overnight index swaps.

5. Where institutions cannot apply the approach referred to in paragraph 4, the risk-free rates shall be based on one or more market-implied swap curves used by the institutions to mark positions to market, such as the interbank offered rate swap curves.

Where the data on market-implied swap curves described in the first subparagraph of this paragraph are insufficient, the risk-free rates may be derived from the most appropriate sovereign bond curve for a given currency.

Article 383d

Foreign exchange risk factors

1. The foreign exchange delta risk factors to be applied by institutions to instruments in the CVA portfolio sensitive to foreign exchange spot rates shall be the spot foreign exchange rates between the currency in which an instrument is denominated and the institution's reporting currency. There shall be one bucket per currency pair, containing a single risk factor and a single net sensitivity.

2. The foreign exchange vega risk factors to be applied by institutions to instruments in the CVA portfolio sensitive to foreign exchange volatility shall be the implied volatilities of foreign exchange rates between the currency pairs referred to in paragraph 1. There shall be one bucket for all currencies and maturities, containing all foreign exchange vega risk factors and a single net sensitivity.

3. Institutions shall not be required to distinguish between onshore and offshore variants of a currency for foreign exchange delta and vega risk factors.

Article 383e

Counterparty credit spread risk factors

1. The counterparty credit spread delta risk factor applicable to counterparty credit spread sensitive instruments in the CVA portfolio shall be the credit spreads of individual counterparties and reference names and qualified indices for the following maturities: 0,5 years, 1 year, 3 years, 5 years and 10 years.

2. The interest rate delta risk factor applicable to inflation-rate sensitive instruments in the CVA portfolio shall be the relevant inflation rates per currency and per each of the following maturities: 1 year, 2 years, 5 years, 10 years and 30 years.

Article 383f
Reference credit spread risk factors

1. The reference credit spread delta risk factor applicable to reference credit spread sensitive instruments in the CVA portfolio shall be the credit spreads of all maturities for all reference names within a bucket. There shall be one net sensitivity computed for each bucket.

2. The reference credit spread vega risk factor applicable to instruments in the CVA portolio sensitive to reference credit spread volatility shall be the volatilities of the credit spreads of all tenors for all reference names within a bucket. There shall be one net sensitivity computed for each bucket.

Article 383g
Equity risk factors

1. The buckets for all equity risk factors shall be the buckets referred to in Article 383s.

2. The equity delta risk factors to be applied by institutions to instruments in the CVA portfolio sensitive to equity spot prices shall be the spot prices of all equities mapped to the same bucket referred to in paragraph 1. There shall be one net sensitivity computed for each bucket.

3. The equity vega risk factors to be applied by institutions to instruments in the CVA portfolio sensitive to equity volatility shall be the implied volatilities of all the equities mapped to the same bucket referred to in paragraph 1. There shall be one net sensitivity computed for each bucket.

Article 383h
Commodity risk factors

1. The buckets for all commodity risk factors shall be the sectorial buckets referred to in Article 383v.

2. The commodity delta risk factors to be applied by institutions to instruments in the CVA portfolio sensitive to commodity spot prices shall be the spot prices of all commodities mapped to the same sectorial bucket referred to in paragraph 1. There shall be one net sensitivity computed for each sectorial bucket.

3. The commodity vega risk factors to be applied by institutions to instruments in the CVA portfolio sensitive to commodity price volatility shall be the implied volatilities of all the commodities mapped to the same sectorial bucket referred to in paragraph 1. There shall be one net sensitivity computed for each sectorial bucket.

Article 383i
Delta risk sensitivities

1. Institutions shall calculate delta sensitivities consisting of interest rate risk factors as follows:

(a) the delta sensitivities of the aggregate CVA to risk factors consisting of risk-free rates, as well as of an eligible hedge to those risk factors, shall be calculated as follows:

$$S_{r_{kt}}^{CVA} = \frac{V_{CVA}(r_{kt} + 0.0001, x, y \ldots) - V_{CVA}(r_{kt}, x, y \ldots)}{0.0001}$$

$$S_{r_{kt}}^{hedge_i} = \frac{V_i(r_{kt} + 0.0001, w, z \ldots) - V_i(r_{kt}, w, z \ldots)}{0.0001}$$

where:

$S_{r_{kt}}^{CVA}$ = the sensitivities of the aggregate CVA to a risk-free rate risk factor;

r_{kt} = the value of the risk-free rate risk factor k with maturity t;

V_{CVA} = the aggregate CVA calculated by the regulatory CVA model;

x, y = risk factors other than r_{kt} in V_{CVA};

$S_{r_{kt}}^{hedge_i}$ = the sensitivities of the eligible hedge i to a risk-free rate risk factor;

V_i = the pricing function of the eligible hedge i;

w, z = risk factors other than r_{kt} in the pricing function V_i.

(b) the delta sensitivities to risk factors consisting of inflation rates as well as of an eligible hedge to those risk factor, shall be calculated as follows:

$$S_{infl_{kt}}^{CVA} = \frac{V_{CVA}(infl_{kt} + 0.0001, x, y \ldots) - V_{CVA}(infl_{kt}, x, y \ldots)}{0.0001}$$

$$S_{infl_{kt}}^{hedge_i} = \frac{V_i(infl_{kt} + 0.0001, w, z \ldots) - V_i(infl_{kt}, w, z \ldots)}{0.0001}$$

where:

$S_{infl_{kt}}^{CVA}$ = the sensitivities of the aggregate CVA to an inflation rate risk factor;

$infl_{kt}$ = the value of an inflation rate risk factor k with maturity t;

V_{CVA} = the aggregate CVA calculated by the regulatory CVA model;

x, y = risk factors other than $infl_{kt}$in V_{CVA};

$S_{infl_{kt}}^{hedge_i}$ = the sensitivities of the eligible hedge i to an inflation rate risk factor;

V_i = the pricing function of the eligible hedge i;

w, z = risk factors other than $infl_{kt}$in the pricing function V_i.

2. Institutions shall calculate the delta sensitivities of the aggregate CVA to risk factors consisting of foreign exchange spot rates, as well as of an eligible hedge instrument to those risk factors, as follows:

$$S_{FX_k}^{CVA} = \frac{V_{CVA}(FX_k + 0.01, x, y \ldots) - V_{CVA}(FX_k, x, y \ldots)}{0.01}$$

$$S_{FX_k}^{hedge_i} = \frac{V_i(FX_k + 0.01, w, z \ldots) - V_i(FX_k, w, z \ldots)}{0.01}$$

where:

$S_{FX_k}^{CVA}$ = the sensitivities of the aggregate CVA to a foreign exchange spot rate risk factor;

FX_k = the value of the foreign exchange spot rate risk factor k;

V_{CVA} = the aggregate CVA calculated by the regulatory CVA model;

x, y = risk factors other than FX_kin V_{CVA};

$S_{FX_k}^{hedge_i}$ = the sensitivities of the eligible hedge i to a foreign exchange spot rate risk factor;

V_i = the pricing function of the eligible hedge i;

w, z = risk factors other than FX_k in the pricing function V_i.

3. Institutions shall calculate the delta sensitivities of the aggregate CVA to risk factors consisting of counterparty credit spread rates, as well as of an eligible hedge instrument to those risk factors, as follows:

$$S_{ccs_{kt}}^{CVA} = \frac{V_{CVA}(ccs_{kt} + 0.0001, x, y \dots) - V_{CVA}(ccs_{kt}, x, y \dots)}{0.0001}$$

$$S_{ccs_{kt}}^{hedge_i} = \frac{V_i(ccs_{kt} + 0.0001, w, z \dots) - V_i(ccs_{kt}, w, z \dots)}{0.01}$$

where:

$S_{ccs_{kt}}^{CVA}$ = the sensitivities of the aggregate CVA to a counterparty credit spread rate risk factor;

ccs_{kt} = the value of the counterparty credit spread rate risk factor k at maturity t;

V_{CVA} = the aggregate CVA calculated by the regulatory CVA model;

x, y = risk factors other than ccs_{kt} in V_{CVA};

$S_{ccs_{kt}}^{hedge_i}$ = the sensitivities of the eligible hedge i to a counterparty credit spread rate risk factor;

V_i = the pricing function of the eligible hedge i

w, z = risk factors other than ccs_{kt} in the pricing function V_i.

4. Institutions shall calculate the delta sensitivities of the aggregate CVA to risk factors consisting of reference credit spread rates, as well as of an eligible hedge instrument to those risk factors, as follows:

$$S_{rcs_{kt}}^{CVA} = \frac{V_{CVA}(ccs_{kt} + 0.0001, x, y \dots) - V_{CVA}(rcs_{kt}, x, y \dots)}{0.0001}$$

$$S_{rcs_{kt}}^{hedge_i} = \frac{V_i(rcs_{kt} + 0.0001, w, z \dots) - V_i(rcs_{kt}, w, z \dots)}{0.0001}$$

where:

$S_{rcs_{kt}}^{CVA}$ = the sensitivities of the aggregate CVA to a reference credit spread rate risk factor;

rcs_{kt} = the value of the reference credit spread rate risk factor k at maturity t;

V_{CVA} = the aggregate CVA calculated by the regulatory CVA model;

x, y = risk factors other than ccs_{kt} in V_{CVA};

$S_{rcs_{kt}}^{hedge_i}$ = the sensitivities of the eligible hedge i to a reference credit spread rate risk factor;

V_i = the pricing function of the eligible hedge i

w, z = risk factors other than ccs_{kt} in the pricing function V_i.

5. Institutions shall calculate the delta sensitivities of the aggregate CVA to risk factors consisting of equity spot prices, as well as of an eligible hedge instrument to those risk factors, as follows:

$$S_{EQ}^{CVA} = \frac{V_{CVA}(EQ + 0.01, x, y \dots) - V_{CVA}(EQ, x, y \dots)}{0.01}$$

$$S_{EQ}^{hedge_i} = \frac{V_i(EQ + 0.01, w, z \dots) - V_i(EQ, w, z \dots)}{0.01}$$

where:

S_{EQ}^{CVA} = the sensitivities of the aggregate CVA to an equity spot price risk factor;

EQ = the value of the equity spot price;

V_{CVA} = the aggregate CVA calculated by the regulatory CVA model;

x, y = risk factors other than EQ in V_{CVA};

$S_{EQ}^{hedge_i}$ = the sensitivities of the eligible hedge i to an equity spot price risk factor;

V_i = the pricing function of the eligible hedge i;

w, z = risk factors other than EQ in the pricing function V_i.

6. Institutions shall calculate the delta sensitivities of the aggregate CVA to risk factors consisting of commodity spot prices, as well as of an eligible hedge instrument to those risk factors, as follows:

$$S_{CTY}^{CVA} = \frac{V_{CVA}(1.01CTY, x, y \dots) - V_{CVA}(CTY, x, y \dots)}{0.01}$$

$$S_{CTY}^{hedge_i} = \frac{V_i(1.01CTY, w, z \dots) - V_i(CTY, w, z \dots)}{0.01}$$

where:

S_{CTY}^{CVA} = the sensitivities of the aggregate CVA to a commodity spot price risk factor;

CTY = the value of the commodity spot price;

V_{CVA} = the aggregate CVA calculated by the regulatory CVA model;

x, y = risk factors other than CTY in V_{CVA};

$S_{CTY}^{hedge_i}$ = the sensitivities of the eligible hedge i to a commodity spot price risk factor;

V_i = the pricing function of the eligible hedge i;

w, z = risk factors other than CTY in the pricing function V_i.

Article 383j

Vega risk sensitivities

Institutions shall calculate the vega risk sensitivities of the aggregate CVA to risk factors consisting of implied volatility, as well as of an eligible hedge instrument to those risk factors, as follows:

$$S_{vol_{kt}}^{CVA} = \frac{V_{CVA}(vol_k + 0.01, x, y \dots) - V_{CVA}(vol_k, x, y \dots)}{0.01}$$

$$S_{vol_k}^{hedge_i} = \frac{V_i(vol_k + 0.01, w, z \dots) - V_i(vol_k, w, z \dots)}{0.01}$$

where:

$S_{vol_k}^{CVA}$ = the sensitivities of the aggregate CVA to an implied volatility risk factor;

vol_k = the value of the implied volatility risk factor, expressed as a percentage;

V_{CVA} = the aggregate CVA calculated by the regulatory CVA model;

x, y = risk factors other than vol_k in the pricing function V_{CVA};

$S_{vol_k}^{hedge_i}$ = the sensitivities of the eligible hedge instrument i to an implied volatility risk factor;

V_i = the pricing function of the eligible hedge i;

w, z = risk factors other than vol_k in the pricing function V_i.

Article 383k

Risk weights for interest rate risk

1. For currencies referred to in Article 383c(2), the risk weights of risk-free rate delta sensitivities for each bucket in Table 1 shall be the following:

Table 1

Bucket	Maturity	Risk Weight
1	1 year	1.11%
2	2 years	0.93%
3	5 years	0.74%
4	10 years	0.74%
5	30 years	0.74%

2. For currencies other than the currencies referred to in Article 383c(2), the risk weight of risk-free rate delta sensitivities shall be 1.58%.

3. For inflation rate risk denominated in one of the currencies referred to in Article 383c(2), the risk weight of the sensitivity to the inflation rate risk shall be 1.11%.

4. For inflation rate risk denominated in a currency other than the currencies referred to in Article 383c(2), the risk weight of the sensitivity to the inflation rate risk shall be 1.58%.

5. The risk weights to be applied to sensitivities to interest rate vega risk factors and to inflation rate risk factors for all currencies shall be 100%.

Article 383l

Intra-bucket correlations for interest rate risk

1. For the currencies referred to in Article 383c(2), the correlation parameters that institutions shall apply for the aggregation of the risk-free rate delta sensitivities between the different buckets set out in Table 2 shall be the following:

Table 2

Bucket	1	2	3	4	5
1	100%	91%	72%	55%	31%
2		100%	87%	72%	45%
3			100%	91%	68%
4				100%	83%
5					100%

2. The correlation parameter that institutions shall apply for the aggregation of inflation rate delta risk sensitivity and risk-free rate delta sensitivity denominated in the same currency shall be 40%.

3. The correlation parameter that institutions shall apply for the aggregation of inflation rate vega risk factor sensitivity and interest rate vega risk factor sensitivity denominated in the same currency shall be 40%.

Article 383m

Risk weights for foreign exchange risk

1. The risk weights for all delta sensitivities to foreign exchange risk factor between an institution's reporting currency and another currency shall be 11%.

2. The risk weights for all vega sensitivities to foreign exchange risk factor shall be 100%.

Article 383n

Correlations for foreign exchange risk

A uniform correlation parameter equal to 60% shall apply to the aggregation of sensitivities to delta and vega foreign exchange risk factors.

Article 383o

Risk weights for counterparty credit spread risk

1. The risk weights for the delta sensitivities to credit spread risk factors shall be the same for all maturities (0,5 years, 1 year, 3 years, 5 years, 10 years) within each bucket in Table 3 and shall be the following:

Table 3

Bucket number	Credit quality	Sector	Risk weight (percentage points)
1	All	Central government, including central banks, of a Member State	0,5%
2	Credit quality step 1 to 3	Central government, including central banks, of a third country, multilateral development banks and international organisations referred to in Articles 117(2) and 118	0,5%
3		Regional or local authority and public sector entities	1,0%
4		Financial sector entities including credit institutions incorporated or established by a central government, a regional government or a local authority and promotional lenders	5,0%
5		Basic materials, energy, industrials, agriculture, manufacturing, mining and quarrying	3,0%
6		Consumer goods and services, transportation and storage, administrative and support service activities	30%
7		Technology, telecommunications	2,0%
8		Health care, utilities, professional and technical activities	1,5%
9		Other sector	5,0%
10		Qualified indices	1,5%
11	Credit quality step 4 to 6 and unrated	Central government, including central banks, of a third country, multilateral development banks and international organisations referred to in Articles 117(2) and 118	2,0%
12		Regional or local authority and public sector entities	4,0%
13		Financial sector entities including credit institutions incorporated or established by	12,0%

		a central government, a regional government or a local authority and promotional lenders	
14		Basic materials, energy, industrials, agriculture, manufacturing, mining and quarrying	7,0%
15		Consumer goods and services, transportation and storage, administrative and support service activities	8,5%
16		Technology, telecommunications	5,5%
17		Health care, utilities, professional and technical activities	5,0%
18		Other sector	12,0%
19		Qualified indices	5,0%

2. To assign a risk exposure to a sector, institutions shall rely on a classification that is commonly used in the market for grouping issuers by sector. Institutions shall assign each issuer to only one of the sector buckets laid down in Table 3. Risk exposures from any issuer that an institution cannot assign to a sector in such a manner shall be assigned to either bucket 9 or bucket 18 in Table 3, depending on the credit quality of the issuer.

3. Institutions shall assign to buckets 10 and 19 in Table 3 only exposures that reference qualified indices as referred to in Article 383b(4).

4. Institutions shall use a look-through approach to determine the sensitivities of an exposure referencing a non-qualified index.

Article 383p

Intra-bucket correlations for counterparty credit spread risk

1. Between two sensitivities WS_k and WS_l, resulting from risk exposures assigned to sector buckets 1 to 9 and 11 to 18, as laid down in Article 383o(1), Table 3, the correlation parameter ρ_{kl} shall be set as follows:

$$\rho_{kl} = \rho_{kl}^{(tenor)} \cdot \rho_{kl}^{(name)} \cdot \rho_{kl}^{(quality)}$$

where:

$\rho_{kl}^{(tenor)}$ shall be equal to 1 where the two vertices of the sensitivities k and l are identical, otherwise it shall be equal to 90%;

$\rho_{kl}^{(name)}$ shall be equal to 1 where the two names of sensitivities k and l are identical, otherwise it shall be equal to 50%;

$\rho_{kl}^{(quality)}$ shall be equal to 1 where the two names are both in buckets 1 to 9 or are both in buckets 11 to 18, otherwise it shall be equal to 80%.

2. Between two sensitivities WS_k and WS_l, resulting from risk exposures assigned to sector buckets 10 and 19, the correlation parameter ρ_{kl} shall be set as follows:

$$\rho_{kl} = \rho_{kl}^{(tenor)} \cdot \rho_{kl}^{(name)} \cdot \rho_{kl}^{(quality)}$$

where:

$\rho_{kl}^{(tenor)}$ shall be equal to 1 where the two vertices of the sensitivities k and l are identical, otherwise it shall be equal to 90%;

$\rho_{kl}^{(name)}$ shall be equal to 1 where the two names of sensitivities k and l are identical and the two indices are of the same series, otherwise it shall be equal to 80%;

$\rho_{kl}^{(quality)}$ shall be equal to 1 where the two names are both in buckets 10 or both in bucket 19, otherwise it shall be equal to 80%.

Article 383q

Correlations across buckets for counterparty credit spread risk

The cross-bucket correlations for credit spread delta risk shall be the following:

Table 4

Bucket	1, 2, 3, 11 and 12	4 and 13	5 and 14	6 and 15	7 and 16	8 and 17	9 and 18	10 and 19
1, 2, 3, 11 and 12	100%	10%	20%	25%	20%	15%	0%	45%
4 and 13		100%	5%	15%	20%	5%	0%	45%
5 and 14			100%	25%	25%	5%	0%	45%
6 and 15				100%	83%	5%	0%	45%
7 and 16					100%	5%	0%	45%
8 and 17						100%	0%	45%
9 and 18							100%	0%
10 and 19								100%

Article 383r

Risk weights for reference credit spread risk

1. The risk weights for the delta sensitivities to reference credit spread risk factors shall be the same for all maturities (0,5 years, 1 year, 3 years, 5 years, 10 years) and all reference credit spread exposures within each bucket in Table 5 and shall be the following:

Table 5

Bucket number	Credit quality	Sector	Risk weight (percentage points)
1	All	Central government, including central banks, of a Member State	0,5%
2	Credit quality step 1 to 3	Central government, including central banks, of a third country, multilateral development banks and international organisations referred to in Articles 117(2) and 118	0,5%
3		Regional or local authority and public sector entities	1,0%
4		Financial sector entities including credit institutions incorporated or established by a central government, a regional government or a local authority and promotional lenders	5,0%
5		Basic materials, energy, industrials, agriculture, manufacturing, mining and quarrying	3,0%
6		Consumer goods and services, transportation and storage, administrative and support service activities	3,0%
7		Technology, telecommunications	2,0%
8		Health care, utilities, professional and technical activities	1,5%
10		Qualified indices	1,5%
11	Credit quality step 4 to 6 and unrated	Central government, including central banks, of a third country, multilateral development banks and international organisations referred to in Articles 117(2) and 118	2,0%
12		Regional or local authority and public sector entities	4,0%
13		Financial sector entities including credit institutions incorporated or established by a central government, a regional government or a local authority and promotional lenders	12,0%
14		Basic materials, energy, industrials, agriculture, manufacturing, mining and quarrying	7,0%
15		Consumer goods and services, transportation and	8,5%

		storage, administrative and support service activities	
16		Technology, telecommunications	5,5%
17		Health care, utilities, professional and technical activities	5,0%
18		Qualified indices	5,0%
19	Other sector		12,0%

2. To assign a risk exposure to a sector, institutions shall rely on a classification that is commonly used in the market for grouping issuers by sector. Institutions shall assign each issuer to only one of the sector buckets in Table 5. Risk exposures from any issuer that an institution can not assign to a sector in such a manner shall be assigned to bucket 19 in Table 5, depending on the credit quality of the issuer.

3. Institutions shall assign to buckets 10 and 18 only exposures that reference qualified indices as referred to in Article 383b(4).

4. Institutions shall use a look-through approach to determine the sensitivities of an exposure referencing a non-qualified index.

Article 383s

Intra-bucket correlations for reference credit spread risk

1. Between two sensitivities WS_k and WS_l, resulting from risk exposures assigned to sector buckets 1 to 9 and 11 to 18 of Article A383r(1), Table 5, the correlation parameter ρ_{kl} shall be set as follows:

$$\rho_{kl} = \rho_{kl}^{(tenor)} \cdot \rho_{kl}^{(name)} \cdot \rho_{kl}^{(quality)}$$

where:

$\rho_{kl}^{(tenor)}$ shall be equal to 1 where the two vertices of the sensitivities k and l are identical, otherwise it shall be equal to 90%;

$\rho_{kl}^{(name)}$ shall be equal to 1 where the two names of sensitivities k and l are identical, otherwise it shall be equal to 50%;

$\rho_{kl}^{(quality)}$ shall be equal to 1 where the two names are both in buckets 1 to 9 or are both in buckets 11 to 18, otherwise it shall be equal to 80%.

2. Between two sensitivities WS_k and WS_l, resulting from risk exposures assigned to sector buckets 10 and 19, the correlation parameter ρ_{kl} shall be set as follows:

$$\rho_{kl} = \rho_{kl}^{(tenor)} \cdot \rho_{kl}^{(name)} \cdot \rho_{kl}^{(quality)}$$

where:

$\rho_{kl}^{(tenor)}$ shall be equal to 1 where the two vertices of the sensitivities k and l are identical, otherwise it shall be equal to 90%;

$\rho_{kl}^{(name)}$ shall be equal to 1 where the two names of sensitivities k and l are identical and the two indices are of the same series, otherwise it shall be equal to 80%;

$\rho_{kl}^{(quality)}$ shall be equal to 1 where the two names are both in buckets 10 or both in bucket 19, otherwise it shall be equal to 80%.

Article 383t

Risk weights buckets for equity risk

1. The risk weights for the delta sensitivities to equity spot price risk factors shall be the same for all equity risk exposures within each bucket in Table 6 and shall be the following:

Table 6

Bucket number	Market capitalisation	Economy	Sector	Risk weight for equity spot price (percentage points)
1	Large	Emerging market economy	Consumer goods and services, transportation and storage, administrative and support service activities, healthcare, utilities	55%
2			Telecommunications, industrials	60%
3			Basic materials, energy, agriculture, manufacturing, mining and quarrying	45%
4			Financials including government-backed financials, real estate activities, technology	55%
5		Advanced economy	Consumer goods and services, transportation and storage, administrative and support service activities, healthcare, utilities	30%
6			Telecommunications, industrials	35%
7			Basic materials, energy, agriculture, manufacturing, mining and quarrying	40%
8			Financials including government-backed financials, real estate activities, technology	50%
9	Small	Emerging market economy	All sectors described under bucket numbers 1, 2, 3, and 4	70

10		Advanced economy	All sectors described under bucket numbers 5, 6, 7, and 8	50%
11	Other sector			70%
12	Large	Advanced economy	Qualified indices	15%
13	Other		Qualified indices	25%

2. For the purposes of paragraph 1, what constitutes a small and a large capitalisation shall be specified in the regulatory technical standards referred to in Article 325bd(7).

3. For the purposes of paragraph 1, what constitutes an emerging market and an advanced economy shall be specified in the regulatory technical standards referred to in Article 325ap(3).

4. When assigning a risk exposure to a sector, institutions shall rely on a classification that is commonly used in the market for grouping issuers by industry sector. Institutions shall assign each issuer to one of the sector buckets in paragraph 1, Table 6, and shall assign all issuers from the same industry to the same sector. Risk exposures from any issuer that an institution cannot assign to a sector in that fashion shall be assigned to bucket 11. Multinational or multi-sector equity issuers shall be allocated to a particular bucket on the basis of the most material region and sector in which the equity issuer operates.

5. The risk weights for equity vega risk shall be set to 78% for buckets 1 to 8 and bucket 12, and to 100% for all other buckets.

Article 383u

Correlations across buckets for equity risk

The cross-bucket correlation parameter for equity delta and vega risk shall be set at:

(a) 15%, where the two buckets fall within buckets 1 to 10 of Article 383t(1), Table 6;

(b) 75%, where the two buckets are buckets 12 and 13 of Article 383t(1), Table 6;

(c) 45%, where one of the buckets is bucket 12 and 13 of Article 383t(1), Table 6, and the other bucket falls between buckets 1 and 10 of Article 383t(1), Table 6;

(d) 0%, where one of the two buckets is bucket 11 of Article 383t(1), Table 6.

Article 383v

Risk weights buckets for commodity risk

1. The risk weights for the delta sensitivities to commodity spot price risk factors shall be the same for all commodity risk exposures within each bucket in Table 7 and shall be the following:

Table 7

Bucket	Bucket name	Risk weight for

number		commodity spot price (percentage points)
1	Energy – Solid combustibles	30%
2	Energy – Liquid combustibles	35%
3	Energy - Electricity	60%
4	Energy – Carbon trading	40%
5	Freight	80%
6	Metals – non-precious	40%
7	Gaseous combustibles	45%
8	Precious metals (including gold)	20%
9	Grains & oilseed	35%
10	Livestock & diary	25%
11	Soft and other agriculturals	35%
12	Other commodity	50%

2. The risk weights for commodity vega risk shall be set to 100%.

Article 383w

Risk weights buckets for commodity risk

1. The cross-bucket correlation parameter for commodity delta risk shall be set at:

(a) 20%, where the two buckets fall within buckets 1 to 11 of Article 383v(1), Table 7;

(b) 0%, where one of the two buckets is bucket 12 of Article 383v(1), Table 7.

2. The cross-bucket correlation parameter for commodity vega risk shall be set at:

(a) 20%, where the two buckets fall within buckets 1 to 11 of Article 383v(1), Table 7;

(b) 0%, where one of the two buckets is bucket 12 of Article 383v(1), Table 7.';

(170) Articles 384, 385 and 386 are replaced by the following:

'Article 384

Basic approach

1. An institution shall calculate the own funds requirements for CVA risk in accordance with paragraphs 2 or 3, as applicable, for a portfolio of transactions with one or more counterparties by using one of the following formulae, as appropriate:

(a) the formula set out in paragraph 2, where the institution includes in the calculation one or more eligible hedges recognised in accordance with Article 386;

(b) the formula set out in paragraph 3, where the institution does not include in the calculation any eligible hedges recognised in accordance with Article 386.

The approaches set out in points (a) and (b) shall not be used in combination.

2. An institution that meets the condition referred to in paragraph 1, point (a), shall calculate the own funds requirements for CVA risks as follows:

$$BACVA^{total} = DS_{CVA} \cdot (\beta \cdot BACVA^{csr-unhedged} + (1-\beta) \cdot BACVA^{csr-hedged})$$

where:

$BACVA^{total}$ = the own funds requirements for CVA risk under the basic approach;

$BACVA^{csr-unhedged}$ = the own funds requirements for CVA risk under the basic approach as calculated in accordance with paragraph 3 for an institution that meets the condition laid down in paragraph 1, point (b);

DS_{CVA} = 0,65;

β = 0,25;

$$BACVA^{csr-hedged} = \sqrt{\left(\rho \cdot \sum_c (SCVA_c - SNH_c) - IH\right)^2 + (1-\rho^2) \cdot \sum_c (SCVA_c - SNH_C)^2 + \sum_c HMA_c}$$

where:

$$SCVA_c = \frac{1}{a} \cdot RW_c \cdot \sum_{NS \in c} M_{NS}^c \cdot EAD_{NS}^c \cdot DF_{NS}^c$$

$$SNH_c = \sum_{h \in c} r_{hc} \cdot RW_h^{SN} \cdot M_h^{SN} \cdot B_h^{SN} \cdot DF_h^{SN}$$

$$IH = \sum_i RW_i^{ind} \cdot M_i^{ind} \cdot B_i^{ind} \cdot DF_i^{ind}$$

$$HMA_c = \sum_h (1 - r_{hc}^2) \cdot (RW_h . M_h^{SN} \cdot B_h^{SN} \cdot DF_h^{SN})^2$$

a =1,4;

ρ =0,5;

c =the index that denotes all the counterparties for which the institution calculates the own funds requirements for CVA risk using the approach laid down in this Article;

NS = the index that denotes all the netting sets with a given counterparty for which the institution calculates the own funds requirements for CVA risk using the approach laid down in this Article;

h = the index that denotes all the single-name instruments recognised as eligible hedges in accordance with Article 386 for a given counterparty for which the institution calculates the own funds requirements for CVA risk using the approach laid down in this Article ;

i = the index that denotes all the index instruments recognised as eligible hedges in accordance with Article 386 for all the counterparties for which the institution calculates the own funds requirements for CVA risk using the approach laid down in this Article ;

RW_c = the risk weight applicable to counterparty ‘c’. Counterparty ‘c’ shall be mapped to one of the risk weights based on a combination of sector and credit quality and determined in accordance with Table 1.

M_{NS}^c= the effective maturity for the netting set NS with counterparty c;

For an institution using the methods set out in Title II, Chapter 6, Section 6, M_{NS}^c shall be calculated in accordance with Article 162(2), point(g). However, for that calculation, M_{NS}^c shall not be capped at five years, but at the longest contractual remaining maturity in the netting set.

For an institution not using the methods set out in Title II, Chapter 6, Section 6, M_{NS}^c shall be the average notional weighted maturity as referred to in Article 162(2), point (b). However, for that calculation, M_{NS}^c shall not be capped at five years, but at the longest contractual remaining maturity in the netting set.

EAD_{NS}^c = the counterparty credit risk exposure value of the netting set NS with counterparty c, including the effect of collateral in accordance with the methods set out in Title II, Chapter 6, Sections 3 to 6, as applicable to the calculation of the own funds requirements for counterparty credit risk referred to in Article 92(4), points (a) and (f);

DF_{NS}^c = the supervisory discount factor for the netting set NS with counterparty c.

For an institution, using the methods set out in Title II, Chapter 6, Section 6, the supervisory discount factor shall be set to 1. In all other cases, the supervisory discount factor shall be calculated as follows:

$$\frac{1 - e^{-0.05 * M_{NS}^c}}{0.05 \cdot M_{NS}^c}$$

r_{hc} = the supervisory correlation between the credit spread risk of counterparty c and the credit spread risk of a single-name instrument recognised as an eligible hedge h for counterparty c, determined in accordance with Table 2;

M_h^{SN} = the maturity of a single-name instrument recognised as an eligible hedge;

B_h^{SN} = the notional of a single name instrument recognised as an eligible hedge;

DF_h^{SN} = the supervisory discount factor for a single name instrument recognised as an eligible hedge, calculated as follows:

$$\frac{1 - e^{-0.05 M_h^{SN}}}{0.05 \cdot M_h^{SN}}$$

RW_h^{SN} = the supervisory risk weight of a single-name instrument recognised as an eligible hedge. Those risk weights shall be based on a combination of sector and credit quality of the reference credit spread of the hedging instrument and determined in accordance with Table 1;

M_i^{ind} = the maturity of one or more positions in the same index instrument recognised as an eligible hedge. In the case of more than one positions in the same index instrument, M_i^{ind} shall be the notional-weighted maturity of all those positions;

B_i^{ind} = the full notional of one or more positions in the same index instrument recognised as an eligible hedge. In the case of more than one positions in the same index instrument, B_i^{ind}shall be the notional-weighted maturity of all those positions;

DF_i^{ind}= the supervisory discount factor for one or more positions in the same index instrument recognised as an eligible hedge, calculated as follows:

$$\frac{1 - e^{-0.05 M_i^{ind}}}{0.05 \cdot M_i^{ind}}$$

RW_i^{ind}= the supervisory risk weight of an index instrument recognised as an eligible hedge. RW_i^{ind} shall be based on a combination of sector and credit quality of all the index constituents, calculated as follows:

(a) where all the index constituents belong to the same sector and have the same credit quality, as determined in accordance with Table 1, RW_i^{ind} shall be calculated as the relevant risk weight of Table 1 for that sector and credit quality multiplied by 0,7;

(b) where all the index constituents do not belong to the same sector or do not have the same credit quality , RW_i^{ind} shall be calculated as a weighted average of the risk weights of all the index constituents, as determined in accordance with Table 1, multiplied by 0,7;

Table 1

Sector of counterparty	Credit quality	
	Credit quality step 1 to 3	Credit quality step 4 to 6 and not rated
Central government, including central banks, of a third country, multilateral development banks and international organisations referred to in Articles 117(2) or Article 118	0,5 %	3,0 %
Regional or local authority and public sector entities	1,0 %	4,0 %

Financial sector entities including credit institutions incorporated or established by a central government, a regional government or a local authority and promotional lenders	5,0 %	12,0 %
Basic materials, energy, industrials, agriculture, manufacturing, mining and quarrying	3,0 %	7,0 %
Consumer goods and services, transportation and storage, administrative and support service activities	3,0 %	8,5%
Technology, telecommunications	2,0 %	5,5 %
Health care, utilities, professional and technical activities	1,5%	5,0 %
Other sector	5,0 %	12,0 %

Table 2

Correlations between credit spread of counterparty and single-name hedge	
Single-name hedge h of counterparty i	Value of r_{hc}
Counterparties referred to in Article 386(3)(a), point (i)	100 %
Counterparties referred to in Article 386(3)(a), point (ii)	80 %
Counterparties referred to in Article 386(3)(a), point (iii)	50 %

2. An institution that meets the condition referred in to paragraph 1, point (b), shall calculate the own funds requirements for CVA risk as follows:

$$BACVA^{csr-unhedged} = \sqrt{\left(\rho \cdot \sum_c SCVA_c\right)^2 + (1-\rho^2) \cdot \sum_c SCVA_c^2}$$

where all the terms are the ones set out in paragraph 2.

Article 385

Simplified approach

1. An institution that meets all the conditions set out in Article 273a(2) may calculate the own funds requirements for CVA risk as the risk-weighted exposure amounts for counterparty risk for non-trading book and trading book positions respectively, referred to in Article 92(3), points (a) and (f), divided by 12,5.

2. For the purposes of the calculation referred to in paragraph 1, the following requirements shall apply:

(a) only transactions subject to the own funds requirements for CVA risk laid down in Article 382 shall be subject to that calculation;

(b) credit derivatives that are recognised as internal hedges against counterparty risk exposures shall not be included in that calculation.

3. An institution that no longer meets one or more of the conditions set out in Article 273a(2) shall comply with the requirements set out in Article 273b.

Article 386

Eligible Hedges

1. Positions in hedging instruments shall be recognised as ‘eligible hedges’ for the calculation of own funds requirements for CVA risk in accordance with Articles 383 and 384 where those positions meet all of the following requirements:

(a) those positions are used for the purpose of mitigating CVA risk and are managed as such;

(b) those positions can be entered into with third parties or with the institution’s trading book as an internal hedge, in which case they shall comply with the requirement set out in Article 106(7);

(c) only positions in hedging instruments as referred to in paragraphs 2 and 3 can be recognised as eligible hedges for the calculation of own funds requirements for CVA risks in accordance with Articles 383 and 384 respectively;

(d) a given hedging instrument forms a single position in an eligible hedge and cannot be split into more than one position in more than one eligible hedge.

2. For the calculation of the own funds requirements for CVA risk in accordance with Article 383, only positions in the following hedging instruments shall be recognised as eligible hedges:

(a) instruments that hedge variability of the counterparty credit spread, with the exception of instruments referred in to Article 325(5);

(b) instruments that hedge variability of the exposure component of CVA risk, with the exception of the instruments referred in to Article 325(5).

3. For the calculation of own funds requirements for CVA risk in accordance with Article 384, only positions in the following hedging instruments shall be recognised as eligible hedges:

(a) single-name credit default swaps and single-name contingent-credit default swaps, referencing:

(i) the counterparty directly;

(ii) an entity legally related to the counterparty, where legally related refers to cases where the reference name and the counterparty are either a parent and its subsidiary or two subsidiaries of a common parent;

(iii) an entity that belongs to the same sector and region as the counterparty;

(b) index credit default swaps.

4. Positions in hedging instruments entered into with third parties that are recognised as eligible hedges in accordance with paragraphs 1, 2 and 3 and included in the calculation of the own funds requirements for CVA risk shall not be subject to the own funds requirements for market risk set out in Title IV.

5. Positions in hedging instruments that are not recognised as eligible hedges in accordance with this Article shall subject to the own funds requirements for market risk set out in Title IV.';

(171) Article 402 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the first subparagraph is replaced by the following:

'For the calculation of exposure values for the purposes of Article 395, institutions may, except where prohibited by applicable national law, reduce the value of an exposure or any part of an exposure that is secured by residential property in accordance with Article 125(1) by the pledged amount of the property value, but by not more than 55 % of the property value, provided that all the following conditions are met:';

(ii) point (a) is replaced by the following:

'(a) the competent authorities of the Member States have not set a risk weight higher than 20 % for exposures or parts of exposures secured by residential property in accordance with Article 124(7);';

(b) paragraph 2 is amended as follows:

(i) the first subparagraph is replaced by the following:

'For the calculation of exposure values for the purposes of Article 395, institutions may, except where prohibited by applicable national law, reduce the value of an exposure or any part of an exposure that is secured by commercial property in accordance with Article 126(1) by the pledged amount of the property value, but by not more than 55 % of the property value, provided that all the following conditions are met:';

(ii) point (a) is replaced by the following:

'(a) the competent authorities of the Member States have not set a risk weight higher than 60 % for exposures or parts of exposures secured by residential property in accordance with Article 124(7);';

(172) in Article 429, paragraph 6 is replaced by the following:

'6. For the purposes of paragraph 4, point (e), of this Article and Article 429g, 'regular-way purchase or sale' means a purchase or a sale of a financial asset under contracts for which the terms require delivery of the financial asset within the period established generally by law or convention in the marketplace concerned.';

(173) Article 429c is amended as follows:

(a) in paragraph 3, point (a) is replaced by the following:

‘(a) for trades not cleared through a QCCP, the cash received by the recipient counterparty is not segregated from the assets of the institution;’;

(b) paragraph 4 is replaced by the following:

‘4. For the purposes of paragraph 1 of this Article, institutions shall not include collateral received in the calculation of NICA as defined in Article 272, point (12a).’;

(c) the following paragraph 4a is inserted:

‘4a. By way of derogation from paragraphs 3 and 4, an institution may recognise any collateral received in accordance with Part Three, Title II, Chapter 6, Section 3 where all of the following conditions are met:

(a) the collateral is received from a client for a derivative contract cleared by the institution on behalf of that client;

(b) the contract referred to in point (a) is cleared through a QCCP;

(c) where the collateral has been received in the form of initial margin, that collateral is segregated from the assets of the institution.’;

(d) in paragraph 6, the first subparagraph is replaced by the following:

‘By way of derogation from paragraph 1 of this Article, institutions may use the method set out in Part Three, Title II, Chapter 6, Section 4 or 5 to determine the exposure value of derivative contracts listed in Annex II, points 1 and 2, but only where they also use that method for determining the exposure value of those contracts for the purposes of meeting the own funds requirements set out in Article 92(1), points (a), (b) and (c).’;

(174) Article 429f is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Institutions shall calculate, in accordance with Article 111(2), the exposure value of off-balance-sheet items, excluding the derivative contracts listed in Annex II, credit derivatives, securities financing transactions and the positions referred to in Article 429d.

Where a commitment refers to the extension of another commitment, Article 166(9) shall apply.’;

(b) paragraph 3 is deleted;

(175) in Article 429g, paragraph 1 is replaced by the following:

‘1. Institutions shall treat cash related to regular-way purchases and financial assets related to regular-way sales which remain on the balance sheet until the settlement date as assets in accordance with Article 429(4), point (a).’;

(176) in Article 430, paragraph 1, the following point (h) is added:

‘(h) their exposures to ESG risks.’;

(177) in Article 430a, paragraph 1 is replaced by the following:

‘1. Institutions shall report to their competent authorities on an annual basis the following aggregate data for each national immovable property market to which they are exposed:

(a) losses stemming from exposures for which an institution has recognised residential property as collateral, up to the lower of the pledged amount and 55 % of the property value, unless otherwise decided under Article 124(7);

(b) overall losses stemming from exposures for which an institution has recognised residential property as collateral, up to the part of the exposure that is secured by residential property in accordance with Article 124(2), point (a);

(c) the exposure value of all outstanding exposures for which an institution has recognised residential property as collateral limited to the part that is secured by residential property in accordance with Article 124(2), point (a);

(d) losses stemming from exposures for which an institution has recognised immovable commercial property as collateral, up to the lower of the pledged amount and 55 % of the property value, unless otherwise decided under Article 124(7);

(e) overall losses stemming from exposures for which an institution has recognised immovable commercial property as collateral, up to the part of the exposure that is secured by immovable commercial property in accordance with Article 124(2), point (c);

(f) the exposure value of all outstanding exposures for which an institution has recognised immovable commercial property as collateral limited to the part that is secured by immovable commercial property in accordance with Article 124(2), point (c).’;

(178) Article 433 is replaced by the following:

‘Article 433

Frequency and scope of disclosures

Institutions shall disclose the information required under Titles II and III in the manner set out in this Article, Articles 433a, 433b, 433c and 434.

EBA shall publish annual disclosures on its website on the same date as the date on which institutions publish their financial statements or as soon as possible thereafter.

EBA shall publish semi-annual and quarterly disclosures on its website on the same date as the date on which the institutions publish their financial reports for the corresponding period where applicable or as soon as possible thereafter.

Any delay between the date of publication of the disclosures required under this Part and the relevant financial statements shall be reasonable and, in any event, shall not exceed the timeframe set by competent authorities pursuant to Article 106 of Directive 2013/36/EU.’;

(179) in Article 433a(1), point (c), point (i) is replaced by the following:

‘(i) points (d), (da) and (h) of Article 438;’;

(180) in Article 433b(1), point (a) is amended as follows:

(a) point (ii) is replaced by the following:

‘(ii) points (c), (d) and (da) of Article 438;’;

(b) the following point (iv) is added:

‘(iv) points (c) and (d) of Article 442;’;

(181) in Article 433c, paragraph 2 is amended as follows:

(a) point (d) is replaced by the following:

‘(d) points (c), (d) and (da) of Article 438:’;

(b) the following point (g) is added:

‘(g) points (c) and (d) of Article 442.’;

(182) Article 434 is replaced by the following:

‘Article 434

Means of disclosures

1. Institutions other than small and non-complex institutions shall submit all the information required under Titles II and III in electronic format to EBA no later than the date on which institutions publish their financial statements or financial reports for the corresponding period, where applicable, or as soon as possible thereafter. EBA shall also publish the submission date of this information.

EBA shall ensure that the disclosures made on the EBA website contain the information identical to what institutions submitted to EBA. Institutions shall have the right to resubmit to EBA the information in accordance with the technical standards referred to in Article 434a. EBA shall make available on its website the date when the resubmission took place.

EBA shall prepare and keep up-to-date the tool that specifies the mapping of the templates and tables for disclosures with those on supervisory reporting. The mapping tool shall be accessible to the public on the EBA website.

Institutions may continue to publish a standalone document that provides a readily accessible source of prudential information for users of that information or a distinctive section included in or appended to the institutions' financial statements or financial reports containing the required disclosures and being easily identifiable to those users. Institutions may include in their website a link to the EBA website where the prudential information is published on a centralised manner.

2. Large institutions and other institutions that are not large institutions or small and non-complex institutions shall submit to EBA the disclosures referred to in Article 433a and Article 433c respectively, but not later than on the date of the publication of financial statements or financial reports for the corresponding period or as soon as possible thereafter. If disclosure is required to be made for a period when an institution does not prepare any financial report, the institution shall submit to EBA the information on disclosures as soon as practicable.

3. EBA shall publish on its website the disclosures of small and non-complex institutions on the basis of the information reported by those institutions to competent authorities in accordance with Article 430.

4. While ownership of the data and the responsibility for its accuracy remain with the institutions that produce it, EBA shall make available on its website the information required to be disclosed in accordance with this Part. That archive shall be kept

accessible for a period of time that shall be no less than the storage period set by national law for information included in the institutions' financial reports.

5. EBA shall monitor the number of visits to its single access point on institutions' disclosures and include the related statistics in its annual reports.';

(183) Article 434a is amended as follows:

(a) the first sentence of the first paragraph is replaced by the following:

'EBA shall develop draft implementing technical standards to specify uniform disclosure formats, the associated instructions, information on the resubmission policy and IT solutions for disclosures required under Titles II and III.';

(b) the fourth sentence of the first paragraph is replaced by the following:

'EBA shall submit those draft implementing technical standards to the Commission by [OP please insert the date = one year after the entry into force of this Regulation]';

(184) Article 438 is amended as follows:

(a) point (b) is replaced by the following:

'(b) the amount of the additional own funds requirements based on the supervisory review process as referred to in Article 104(1), point (a), of Directive 2013/36/EU to address risks other than the risk of excessive leverage and its composition;';

(a) point (d) is replaced by the following:

'(d) the total risk exposure amounts as calculated in accordance with Article 92(3) and the corresponding own funds requirements as determined in accordance with Article 92(2), to be broken down by the different risk or exposure categories and sub-categories, as applicable, set out in Part Three and, where applicable, an explanation of the effect on the calculation of own funds and risk-weighted exposure amounts that results from applying capital floors and not deducting items from own funds;';

(c) the following point (da) is added:

'(da) where required to calculate the following amounts, the un-floored total risk exposure amount as calculated in accordance with Article 92(4), and the standardised total risk exposure amount as calculated in accordance with Article 92(5), to be broken down by the different risk categories and sub-categories, as applicable, set out in Part Three and, where applicable, an explanation of the effect on the calculation of own funds and risk-weighted exposure amounts that results from applying capital floors and not deducting items from own funds;';

(185) Article 445 is replaced as follows:

'Article 445

Disclosure of exposures to market risk under the standardised approach

1. Institutions that have not been granted a permission by competent authorities to use the alternative internal market risk model approach as set out in Article 325az, and that use the Simplified Standardised Approach in accordance with Article 325a

or Part Three, Title IV, Chapter 1a, shall disclose a general overview of their trading book positions.

2. Institutions calculating their own funds requirements in accordance with Part Three, Title IV, Chapter 1a, shall disclose their total own funds requirements, their own funds requirements for the sensitivities-based methods, their default risk charge and their own funds requirements for residual risks. The disclosure of own funds requirements for the measures of the sensitivities-based methods and for the default risk shall be broken down for the following instruments:

(a) financial instruments other than securitisation instruments held in the trading book, with a breakdown by risk class, and a separate identification of the default risk own funds requirements;

(b) securitisation instruments not held in the ACTP, with a separate identification of the own funds requirements for credit spread risk and of the own funds requirements for default risk;

(c) securitisation instruments held in the ACTP, with a separate identification of the own funds requirements for credit spread risk and of the own funds requirements for default risk.';

(186) The following Article 445a is inserted:

'Article 445a

Disclosure of CVA risk

1. Institutions subject to the own fund requirements for CVA risk shall disclose the following information:

(a) a general overview of their processes to identify, measure, hedge and monitor their CVA risk;

(b) whether institutions meet all the conditions set out in Article 273a(2); where those conditions are met, whether institutions have chosen to calculate the own funds requirements for CVA risk using the simplified approach set out in Article 385; where institutions have chosen to calculate the own funds requirements for CVA risk using the simplified approach, the own funds requirements for CVA risk in accordance with that approach;

(c) the total number of counterparties for which the standardised approach is used, with a breakdown by counterparty types.

2. Institutions using the standardised approach as defined in Article 383 for the calculation of own funds requirements for CVA risk shall disclose, in addition to the information referred to in paragraph 1, the following information:

(a) the structure and the organisation of the their internal CVA risk management function and governance;

(b) their total own funds requirements for CVA risk under the standardised approach with a breakdown by risk class;

(c) an overview of the eligible hedges used in that calculation, with a breakdown per types as defined in Article 386(2).

3. Institutions using the basic approach as defined in Article 384 for the calculation of own funds requirements for CVA risk shall also disclose, in addition to the information referred to in paragraph 1, the following information:

(a) their total own funds requirements for CVA risk under the basic approach, and the components $BACVA^{total}$ and $BACVA^{csr-hedged}$;

(b) an overview of the eligible hedges used in this calculation, with a breakdown per types as defined in Article 386(3).';

(187) Article 446 is replaced by the following:

'Article 446

Disclosure of operational risk

1. Institutions shall disclose the following information:

(a) the main characteristics and elements of their operational risk management framework;

(b) their own funds requirement for operational risk;

(c) the business indicator component calculated in accordance with Article 313;

(d) the business indicator, calculated in accordance with Article 314(1), and the amounts of each of the business indicator sub-items for each of the three years relevant for the calculation of the business indicator;

(e) the number and amounts of business indicator items that were excluded from the calculation of the business indicator in accordance with Article 315(2), as well as the corresponding justifications for the exclusion.

2. Institutions that calculate their annual operational risk losses in accordance with Article 316(1) shall disclose the following information in addition to the information listed in paragraph 1:

(a) their annual operational risk losses for each of the last ten years, calculated in accordance with Article 316(1);

(b) the number and amounts of operational risk losses that were excluded from the calculation of the annual operational risk loss in accordance with Article 320(1), and the corresponding justifications for that exclusion.';

(188) Article 447 is amended as follows:

(a) point (a) is replaced by the following:

'(a) the composition of their own funds and their risk-based capital ratios as calculated in accordance with Article 92(2);';

(b) the following point (aa) is added:

'(aa) where applicable, the risk-based capital ratios as calculated in accordance with Article 92(2), by using un-floored total risk exposure amounts instead of total risk exposure amounts;';

(c) point (b) is replaced by the following:

'(b) the total risk exposure amounts as calculated in accordance with Article 92(3) and, where applicable, the un-floored total risk exposure amounts as calculated in accordance with Article 92(4);';

(d) point (d) is replaced by the following:

'(d) the combined buffer requirement which the institutions are required to hold in accordance with Chapter 4 of Title VII of Directive 2013/36/EU;';

(189) Article 449a is replaced by the following:

‘*Article 449a*

Disclosure of environmental, social and governance risks (ESG risks)

Institutions shall disclose information on ESG risks, including physical risks and transition risks.

The information referred to in the first paragraph shall be disclosed on an annual basis by small and non-complex institutions and on a semi-annual basis by other institutions.

EBA shall develop draft implementing technical standards specifying uniform disclosure formats for ESG risks, as laid down in Article 434a, ensuring that they are consistent with and uphold the principle of proportionality.’ For small and non-complex institutions, the formats shall not require disclosure of information beyond the information required to be reported to competent authorities in accordance with Article 430(1), point (h).’;

(190) in Article 451(1), the following point (f) is added:

‘(f) the amount of the additional own funds requirements based on the supervisory review process as referred to in Article 104(1), point (a), of Directive 2013/36/EU to address the risk of excessive leverage and its composition.’;

(191) Article 455 is replaced as follows:

‘*Article 455*

Use of internal models for market risk

1. An institution using the internal models referred to in Article 325az for the calculation of own funds requirements for market risk shall disclose:

(a) the institution’s objectives in undertaking trading activities and the processes implemented to identify, measure, monitor and control the institution’s market risks;

(b) the policies referred to in Article 104(1) for determining which position is to be included in the trading book;

(c) a general description of the structure of the trading desks covered by the internal models referred to in Article 325az, including for each desk a broad description of the desk's business strategy, the instruments permitted therein and the main risk types in relation to that desk;

(d) a general overview of the trading book positions not covered by the internal models referred to in Article 325az, including a general description of the desk structure and of type of instruments included in the desks or in the desks categories in accordance with Article 104b;

(e) the structure and organisation of the market risk management function and governance;

(f) the scope, the main characteristics and the key modelling choices of the different internal models referred to in Article 325az used to calculate the risk exposure amounts for the main models used at the consolidated level, and a description to what extent those internal models represent all the models used at the consolidated level, including where applicable:

(i) a broad description of the modelling approach used to calculate the expected shortfall referred to in Article 325ba(1), point (a), including the frequency of data update;

(ii) a broad description of the methodology used to calculate the stress scenario risk measure referred to in Article 325ba(1), point (b), other than the specifications provided for in Article 325bk(3);

(iii) a broad description of the modelling approach used to calculate the default risk charge referred to in Article 325ba(2), including the frequency of data update.

2. Institutions shall disclose on an aggregate basis for all the trading desks covered by the internal models referred to in Article 325az the following components, where applicable:

(a) the most recent value as well as the highest, lowest and mean value for the previous 60 business days of:

(i) the unconstrained expected shortfall measure as defined in Article 325bb(1);

(ii) the unconstrained expected shortfall measure as defined in Article 325bb(1) for each regulatory broad risk factor category;

(b) the most recent value as well as the mean value for the previous 60 business days of:

(i) the expected shortfall risk measure as defined in Article 325bb(1);

(ii) the stress scenario risk measure as defined in Article 325ba(1), point (b);

(iii) the own funds requirement for default risk as defined in Article 325ba(2);

(iv) the sum of the own funds requirements as defined in Articles 325ba(1) and 325ba(2), including the applicable multiplier factor;

(c) the number of backtesting overshootings over the last 250 business days at the 99th percentile as referred to in Article 325bf(1), points (a) and (b), separately.

4. Institutions shall disclose on an aggregate basis for all trading desks the own funds requirements for market risks that would be calculated in accordance with this Title, Chapter 1a, had the institutions not been granted any permission to use their internal models for those trading desks.';

(192) Article 458 is amended as follows:

(a) paragraph 6 is replaced by the following:

'6. Where Member States recognise the measures set in accordance with this Article, they shall notify the ESRB. The ESRB shall forward such notifications without delay to the Council, the Commission, the EBA, the ESRB and the Member State authorised to apply the measures.';

(b) paragraph 9 is replaced by the following:

'9. Before the expiry of the authorisation issued in accordance with paragraphs and 4, the Member State concerned shall, in consultation with the ESRB, and the EBA and the Commission, review the situation and may adopt, in accordance with the procedure referred to in paragraphs 2 and 4, a new decision for the extension of the period of application of national measures for up to two additional years each time.’;

(193) Article 461a is replaced by the following:

‘Article 461a

Own funds requirement for market risks

‘The Commission shall monitor the implementation of the international standards on own funds requirements for market risk in third countries. Where significant differences between the Union implementation and third countries’ implementation of those international standards are observed, including as regards the impact of the rules in terms of own funds requirements and as regards their entry into application, the Commission shall be empowered to adopt a delegated act in accordance with Article 462 to amend this Regulation by:

(a) applying, where necessary to deliver a level playing field, a multiplier equal to or greater than 0 and lower than 1 to the institutions’ own funds requirements for market risk, calculated for specific risk classes and specific risk factors using one of the approaches referred to in Article 325(1), and laid out in:

(i) Articles 325c to 325ay, specifying the alternative standardised approach;

(ii) Articles 325az to 325bp, specifying the alternative internal model approach;

(iii) Articles 326 to 361, specifying the simplified standardised approach, to offset those observed differences between the third countries rules and Union law;

(b) postponing by two years the date from which institutions shall apply the own funds requirements for market risk set out in Part Three, Title IV, or any of the approaches to calculate the own funds requirements for market risk referred to in Article 325(1).’;

(194) the following Article 461b is inserted:

‘Article 461b

Prudential treatment of crypto assets

By 31 December 2025, the Commission shall review whether a dedicated prudential treatment should be developed for exposures to crypto assets, and shall, after consulting EBA and taking into account international

(195) developments, submit a report to the European Parliament and to the Council, together with a legislative proposal, where appropriate.’Article 462 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

‘2. The power to adopt delegated acts referred to in Articles 244(6) and 245(6), in Articles 456 to 460 and in Articles 461a and 461b shall be conferred on the Commission for an indeterminate period of time from 28 June 2013.

3. The delegation of power referred to in Articles 244(6) and 245(6), in Articles 456 to 460 and in Article 461a and 461b may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take

effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of the delegated acts already in force.';

(b) paragraph 6 is replaced by the following:

'6. A delegated act adopted pursuant to Articles 244(6) and 245(6), Articles 456 to 460 and Articles 461a and 461b shall enter into force only if no objection has been expressed by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.';

(196) Article 465 is replaced by the following:

'Article 465

Transitional arrangements for the output floor

1. By way of derogation from Article 92, paragraphs 3 and 6, parent institutions, parent financial holding companies, parent mixed financial holding companies, stand-alone institutions in the EU or stand-alone subsidiary institutions in Member States may apply the following factor 'x' where calculating TREA:

(a) 50 % during the period from 1 January 2025 to 31 December 2025;

(b) 55 % during the period from 1 January 2026 to 31 December 2026;

(c) 60 % during the period from 1 January 2027 to 31 December 2027;

(d) 65 % during the period from 1 January 2028 to 31 December 2028;

(e) 70 % during the period from 1 January 2029 to 31 December 2029;

2. By way of derogation from Article 92(3), point (a), EU parent institutions, EU parent financial holding companies or an EU parent mixed financial holding companies, stand-alone institutions in the EU or stand-alone subsidiary institutions in Member States may, until 31 December 2029, apply the following formula when calculating TREA:

$$\text{TREA} = \min\{\max\{\text{U-TREA}; \text{x} \cdot \text{S-TREA}\}; 125\% \cdot \text{U-TREA}\}$$

For the purposes of that calculation, EU parent institutions, EU parent financial holding companies or an EU parent mixed financial holding companies shall take into account the relevant factors 'x' referred to in paragraph 1.

3. By way of derogation from Article 92(5)(a), point (i), parent institutions, parent financial holding companies or parent mixed financial holding companies, stand-alone institutions in the EU or stand-alone subsidiary institutions in Member States may, until 31 December2032, assign a risk weight of 65 % to exposures to corporates for which no credit assessment by a nominated ECAI is available provided that that entity estimates the PD of those exposures, calculated in accordance with Part Three, Title II, Chapter 3, is no higher than 0,5 %.

EBA shall monitor the use of the transitional treatment laid down in the first subparagraph and the availability of credit assessments by nominated ECAIs for exposures to corporates. EBA shall report its findings to the Commission by 31 December 2028.

On the basis of that report and taking due account of the related internationally agreed standards developed by the BCBS, the Commission shall, where appropriate, submit to the European Parliament and to the Council a legislative proposal by 31 December 2031.

4. By way of derogation from Article 92(5)(a), point (iv), parent institutions, parent financial holding companies or parent mixed financial holding companies, stand-alone institutions in the EU or stand-alone subsidiary institutions in Member States shall, until 31 December 2029, replace alpha by 1 in the calculation of the exposure value for the contracts listed in Annex II in accordance with the approaches set out in Part Three, Title II, Chapter 6, Sections 3 and 4, where the same exposure values are calculated in accordance with the approach set out in Part Three, Title II, Chapter 3, Section 6 for the purposes of the total un-floored risk exposure amount.

The Commission may, having taken into account the EBA report referred to in Article 514, adopt a delegated act in accordance with Article 462 to permanently modify the value of alpha, where appropriate.

5. By way of derogation from Article 92(5)(a), point (i), Member States may, allow parent institutions, parent financial holding companies or parent mixed financial holding companies, stand-alone institutions in the EU or stand-alone subsidiary institutions in Member States to assign the following risk weights provided that all the conditions in the second subparagraph are met.

(a) until 31 December 2032, a risk weight of 10 % to the part of the exposures secured by mortgages on residential property up to 55 % of the property value remaining after any senior or pari passu ranking liens not held by the institution have been deducted,

(b) until 31 December 2029, a risk weight of 45% to any remaining part of the exposures secured by mortgages on residential property up to 80 % of the property value remaining after any senior or *pari passu* ranking liens not held by the institution have been deducted, provided that the adjustment to own funds requirements for credit risk referred to in Article 501 is not applied.

For the purposes of assigning the risk weights in accordance with the first subparagraph, all of the following conditions shall be met:

(a) the qualifying exposures are located in the Member State that has exercised the discretion;

(b) over the last six years the institution's losses on the part of such exposures up to 55 % of the property value do not exceed on average 0,25 % of the total amount, across all such exposures, of credit obligations outstanding in a given year;

(c) for the qualifying exposures the institution has both the following claims in the event of the default or non-payment of the obligor:

(i) a claim on the residential immovable property securing the exposure;

(ii) a claim on the other assets and income of the obligor;

(d) the competent authority has verified that the conditions in points (a), (b) and (c) are met.

Where the discretion referred to in the first subparagraph has been exercised and all the associated conditions in the second subparagraph are met, institutions may assign the following risk weights to the remaining part of the exposures referred to in the second subparagraph, point (b), until 31 December 2032:

(a) 52,5 % during the period from 1 January 2030 to 31 December 2030;

(b) 60 % during the period from 1 January 2031 to 31 December 2031;

(c) 67,5 % during the period from 1 January 2032 to 31 December 2032.

When Member States exercise that discretion, they shall notify EBA and substantiate their decision. Competent authorities shall notify the details of all the verifications referred to in the first subparagraph, point (c), to EBA.

EBA shall monitor the use of the transitional treatment in the first subparagraph and report to the Commission by 31 December 2028 on the appropriateness of the associated risk weights.

On the basis of that report and taking due account of the related internationally agreed standards developed by the BCBS, the Commission shall, where appropriate, submit to the European Parliament and to the Council a legislative proposal by 31 December 2031.';

(197) the following Article 494d is inserted:

'Article 494d

Reversal from the IRB Approach to the Standardised Approach

By way of derogation from Article 149, paragraphs 1, 2 and 3, an institution may from 1 January 2025 until 31 December 2027, revert to the Standardised Approach for one or more of the exposure classes provided for in Article 147(2), where all the following conditions are met:

(a) the institution was already on [OP please insert date = one day before the date of entry into force of this amending Regulation] in existence and authorised by its competent authority to treat those exposure classes under the IRB Approach;

(b) the institution requests a reversal to the Standardised Approach only once during that three year period;

(c) the request to revert to the Standardised Approach is not made with a view to engage in regulatory arbitrage;

(d) the institution has formally notified the competent authority that it wishes to revert to the Standardised Approach for those exposure classes at least six months before it effectively does revert to that approach;

(e) the competent authority has not objected to the institution's request to such reversal within three months from the reception of the notification referred to in point (d).';

(198) Article 495 is replaced by the following:

'Article 495

Treatment of equity exposures under the IRB Approach

1. By way of derogation from Article 107(1), second subparagraph, institutions that have received the permission to apply the Internal Ratings Based Approach to calculate the risk weighted exposure amount for equity exposures shall, until 31

December 2029, calculate the risk weighted exposure amount for each equity exposure for which they have received the permission to apply the Internal Ratings Based Approach as the higher of the following:

(a) the risk weighted exposure amount calculated in accordance with Article 495a, paragraphs 1 and 2;

(b) the risk weighted exposure amount calculated under this Regulation as it stood prior to [OP please insert the date = date of entry into force of this amending Regulation]

2. Instead of applying the treatment laid down in paragraph 1, institutions that have received the permission to apply the Internal Ratings Based Approach to calculate the risk weighted exposure amount for equity exposures may choose to apply the treatment set out in Article 133 and the transitional arrangements in Article 495a to all of their equity exposures at any time until 31 December 2029.

For the purposes of this paragraph, the conditions to revert to the use of less sophisticated approaches laid down in Article 149 shall not apply.

3. Institutions applying the treatment laid down in paragraph 1 shall calculate EL in accordance with Article 158, paragraphs 7, 8 or 9, as applicable, as those paragraphs stood on 1 January 2021.

4. Where institutions request the permission to apply the IRB Approach to calculate the risk weighted exposure amount for equity exposures, competent authorities shall not grant such permission after [OP please insert the date = date of application of this Regulation].';

(199) the following Articles 495a, 495b and 495d are inserted:

'Article 495a

Transitional arrangements for equity exposures

1. By way of derogation from the treatment laid down in Article 133(3), equity exposures shall be assigned the following risk-weights:

(a) 100 % during the period from 1 January 2025 to 31 December 2025;

(b) 130 % during the period from 1 January 2026 to 31 December 2026;

(c) 160 % during the period from 1 January 2027 to 31 December 2027;

(d) 190 % during the period from 1 January 2028 to 31 December 2028;

(e) 220 % during the period from 1 January 2029 to 31 December 2029.

2. By way of derogation from the treatment laid down in Article 133(4), equity exposures shall be assigned the following risk-weights:

(a) 100 % during the period from 1 January 2025 to 31 December 2025;

(b) 160 % during the period from 1 January 2026 to 31 December 2026;

(c) 220 % during the period from 1 January 2027 to 31 December 2027;

(d) 280 % during the period from 1 January 2028 to 31 December 2028;

(e) 340 % during the period from 1 January 2029 to 31 December 2029.

3. By way of derogation from Article 133, institutions may continue to assign the same risk weight that was applicable as of [OP please insert the date = one day

before the date of entry into force of this amending Regulation] to equity exposures to entities of which they have been a shareholder at [adoption date] for six consecutive years and over which they exercise significant influence in the meaning of Directive 2013/34/EU, or the accounting standards to which an institution is subject under Regulation (EC) No 1606/2002, or a similar relationship between any natural or legal person and an undertaking.

Article 495b

Transitional arrangements for specialised lending exposures

1. By way of derogation from Article 161(4), the LGD input floors applicable to specialised lending exposures treated under the IRB Approach where own estimates of LGDs are used, shall be the applicable LGD input floors provided for in Article 161(4), multiplied by the following factors:

(a) 50 % during the period from 1 January 2025 to 31 December 2027;

(b) 80 % during the period from 1 January 2028 to 31 December 2028;

(c) 100 % during the period from 1 January 2029 to 31 December 2029.

2. EBA shall prepare a report on the appropriate calibration of risk parameters applicable to specialised lending exposures under the IRB Approach, and in particular on own estimates of LGD and LGD input floors. EBA shall in particular include in its report data on average numbers of defaults and realised losses observed in the Union for different samples of institutions with different business and risk profiles.

EBA shall submit the report on its findings to the European Parliament, to the Council, and to the Commission, by 31 December 2025.

On the basis of that report, the Commission shall be empowered to amend this Regulation by adopting a delegated act, where appropriate, in accordance with Article 462, to amend the treatment applicable to specialised lending exposures under Part Three, Title II.';

Article 495c

Transitional arrangements for leasing exposures as a CRM technique

1. By way of derogation from Article 230, the applicable value of H_c corresponding to 'other physical collateral' for the exposures referred to in Article 199(7) where the property leased corresponds to the 'other physical collateral' type of funded credit protection, shall be the value of H_c for 'other physical collateral' provided for in Article 230(2), Table 1, multiplied by the following factors:

(a) 50 % during the period from 1 January 2025 to 31 December 2027;

(b) 80 % during the period from 1 January 2028 to 31 December 2028;

(c) 100 % during the period from 1 January 2029 to 31 December 2029.

2. EBA shall prepare a report on the appropriate calibrations of risk parameters associated with leasing exposures under the IRB Approach, and in particular on the LGD_s and H_c provided for in Article 230. EBA shall in particular include in its report data on average numbers of defaults and realised losses observed in the Union for exposures associated with different types of leased properties and different types of institutions practicing leasing activities.

EBA shall submit the report on its finding to the European Parliament, to the Council, and to the Commission, by 30 June 2026.

On the basis of that report, the Commission shall be empowered to amend this Regulation by adopting a delegated act, where appropriate, in accordance with Article 462, to amend the treatment applicable to exposures arising from leasing under Part Three, Title II.';

Article 495d

Transitional arrangements for unconditional cancellable commitments

1. By way of derogation from Article 111(2), institutions shall calculate the exposure value of an off-balance sheet item in the form of unconditionally cancellable commitment by multiplying the percentage provided for in that Article by the following factors:

(a) 0 % during the period from 1 January 2025 to 31 December 2029;

(b) 25 % during the period from 1 January 2030 to 31 December 2030;

(c) 50 % during the period from 1 January 2031 to 31 December 2031;

(d) 75 % during the period from 1 January 2032 to 31 December 2032.

2. EBA shall prepare a report to assess whether the derogation referred to in paragraph 1, point (a), should be extended beyond 31 December 2032 and, where necessary, the conditions under which that derogation should be maintained.

EBA shall submit the report on its finding to the European Parliament, to the Council, and to the Commission, by 31 December 2028.

On the basis of that report and taking due account of the related internationally agreed standards developed by the BCBS, the Commission shall, where appropriate, submit to the European Parliament and to the Council a legislative proposal by 31 December 2031.';

(200) in Article 501(2), point (b) is replaced by the following:

'(b) an SME shall have the meaning laid down in Article 5, point (8);';

(201) Article 501a(1) is amended as follows:

(a) point (a) is replaced by the following:

'(a) the exposure is assigned to the corporate exposure class referred to either in Article 112, point (g), or in Article 147(2), point (c), with the exclusion of exposures in default;';

(b) point (f) is replaced by the following:

'(f) the refinancing risk of the exposure by the obligor is low or adequately mitigated, taking into account any subsidies, grants or funding provided by one or more of the entities listed in paragraph 2, points (b)(i) and (b)(ii);';

(202) Article 501c,is replaced by the following:

‘Article 501c

Prudential treatment of exposures to environmental and/or social factors

EBA, after consulting the ESRB, shall, on the basis of available data and the findings of the Commission High-Level Expert Group on Sustainable Finance, assess whether a dedicated prudential treatment of exposures related to assets, including securitisations, or activities subject to impacts from environmental and/or social factors would be justified. In particular, EBA shall assess:

(a) methodologies for the assessment of the effective riskiness of exposures related to assets and activities subject to impacts from environmental and/or social factors compared to the riskiness of other exposure;

(b) the development of appropriate criteria for the assessment of physical risks and transition risks, including the risks related to the depreciation of assets due to regulatory changes;

(c) the potential short, medium and long-term effects of a dedicated prudential treatment of exposures related to assets and activities subject to impacts from environmental and/or social factors on financial stability and bank lending in the Union.

EBA shall submit a report on its findings to the European Parliament, to the Council and to the Commission by 28 June 2023.’;

(203) Articles 505 and 506 are replaced by the following:

‘Article 505

Review of agricultural financing

By 31 December 2030, EBA shall report to the Commission on the impact of the requirements of this Regulation on agricultural financing.

Article 506

Credit risk – credit insurance

By 31 December 2026, EBA shall report to the Commission on the eligibility and use of policy insurance as credit risk mitigation techniques and on the appropriateness of the associated risk parameters referred to in Part Three, Title II, Chapter 3 and 4.

Based on the report by EBA, the Commission shall be empowered to amend this Regulation by adopting a delegated act, where appropriate, in accordance with Article 462, to amend the treatment applicable to credit insurance referred to in Part Three, Title II.’;

(204) the following Article 506c is inserted:

‘Article 506c

Credit risk – interaction between Common equity Tier 1 reductions and credit risk parameters

By 31 December 2026, EBA shall report to the Commission on the consistency between the current measurement of credit risk and the individual credit risk parameters and on the treatment of any adjustments for the purpose of the computation of the IRB shortfall or excess as referred to in Article 159, and on its consistency with the determination of the exposure value in accordance with Article 166 of this Regulation and with the LGD estimation. The report shall consider the maximum possible economic loss arising from a default event along with its achieved coverage in terms of Common equity Tier 1 capital reductions, taking into account any accounting-based Common equity Tier 1 capital reductions, including from expected credit losses or fair value adjustments, and any discounts on received exposures, and their implications for regulatory deductions.';

(205) the following Articles 519c and 519d are inserted:

'*Article 519c*

Minimum haircut floors framework for SFTs

EBA, in close cooperation with ESMA, shall, by [OP please insert the date = 12 months after entry into force of this Regulation], report to the Commission on the appropriateness of implementing in Union law the minimum haircut floors framework applicable to SFTs to address the potential build-up of leverage outside the banking sector.

The report referred to in the first sub-paragraph shall consider all of the following:

(a) the degree of leverage outside the banking system in the Union and to which extent the minimum haircut floors framework could reduce that leverage if that leverage would become excessive;

(b) the materiality of the SFTs held by EU institutions and subject to the minimum haircut floors framework, including the breakdown of those SFTs which do not comply with the minimum haircut floors;

(c) the estimated impact of the minimum haircut floors framework for EU institutions under the two implementation approaches recommended by the FSB that is a market regulation or a more punitive own funds requirement under this Regulation, under a scenario under which EU institutions would not adjust the haircuts of their SFTs to comply with the minimum haircut floors and an alternative scenario under which they would adjust those haircuts to comply with the minimum haircut floors;

(d) the main drivers behind those estimated impacts, as well as potential unintended consequences of introducing the minimum haircut floors framework on the functioning of the EU SFT markets;

(e) the implementation approach that would be the most effective to meet the regulatory objectives of the minimum haircut floor framework, in light of the considerations laid down in points (a) to (d) and taking into account the level playing field across the financial sector in the Union.

On the basis of that report and taking due account of the FSB recommendation to implement the minimum haircut floors framework applicable to SFTs, as well as the related internationally agreed standards developed by the BCBS, the Commission shall, where appropriate, submit to the European Parliament and to the Council a legislative proposal by [OP please insert the date = 24 months after entry into force of this Regulation].

Article 519d

Operational risk

By [OP please insert the date = 60 months after date of application of Part Three, Title III], the EBA shall report to the Commission on all of the following:

(a) the use of insurance in the context of the calculation of the own funds requirements for operational risk;

(b) whether the recognition of insurance recoveries may allow for regulatory arbitrage by reducing the annual operational risk loss without a commensurate reduction in the actual operational loss exposure;

(c) whether the recognition of insurance recoveries has a different impact on the appropriate coverage of recurring losses and of potential tail losses, respectively.

On the basis of that report, the Commission shall, where appropriate, submit to the European Parliament and to the Council a legislative proposal by [OP please insert the date = 72 months after date of application of Part Three, Title III].';

(206) Annex I is replaced by the Annex to this Regulation.

Article 2

Entry into force and date of application

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

2. This Regulation shall apply from 1 January 2025, with the following exceptions:

(a) the provisions in points (1)(a), (b) and(c), (e) to (h), (j), (u), (v) and (x) concerning certain definitions, the provisions in point (6) concerning the scope of prudential consolidation as well as the provisions in points (8), (10) to (12), and (14) to (23) concerning own funds and eligible liabilities, which shall apply from [OP please insert date = 6 months after date of entry into force of this Regulation];

(b) the provisions in points (1)(d) and (4) concerning amendments in accordance with Regulation (EU) 2019/2033, and the provisions in point (47) concerning to the treatment of exposures in default, which shall apply from the date of entry into force of this Regulation;

(c) the provisions in points (9), (26)(a), (27), (28)(a), (29), (34), (41), (42), (44), (47), (54), (59)(c) (60)(c), (61)(g) and (h), (64)(c), 66(d), (69), (81), (85)(b), (90)(c), (91)(c), (92)(c), (131), (132)(b), (136)(d), (153), (154)(d), (155)(c), (156)(b), (166)(c), (169), (178), (182), (183), (189), (192), (194), (196), (199), (201) to (205) that require European Supervisory Authorities or the ESRB to submit to the Commission draft regulatory or implementing technical standards and reports, the provisions that require the Commission to produce reports, the provisions that empower the Commission to adopt delegated acts or implementing acts, the provisions on review and the provisions that require the European Supervisory Authorities to issue guidelines, which shall apply from the date of entry into force of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament *The President*	*For the Council* *The President*

EUROPEAN
COMMISSION

Brussels, 27.10.2021
COM(2021) 664 final

ANNEX

ANNEX

to the

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 575/2013 on prudential requirements for credit institutions as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor

EN

ANNEX

Classification of Off-Balance Sheet Items

Bucket	Items
1	• General guarantees of indebtedness, including standby letters of credit serving as financial guarantees for loans and securities, and acceptances, including endorsements with the character of acceptances, as well as [any] other direct credit substitutes; • Sale and repurchase agreements and asset sales with recourse where the credit risk remains with the institution; • Securities lent by the institution or securities posted by the institution as collateral, including instances where these arise out of repo-style transactions; • Forward asset purchases, forward deposits and partly paid shares and securities, which represent commitments with certain drawdown; • Off-balance sheet items constituting a credit substitute where not explicitly included in any other category. • Other off-balance sheet items carrying similar risk and as communicated to EBA.
2	• Note issuance facilities (NIFs) and revolving underwriting facilities (RUFs) regardless of the maturity of the underlying facility; • Performance bonds, bid bonds, warranties and standby letters of credit related to particular transactions and similar transaction-related contingent items; • Off-balance sheet items not constituting a credit substitute where not explicitly included in any other category. • Other off-balance sheet items carrying similar risk, as communicated to EBA.
3	• Commitments, regardless of the maturity of the underlying facility, unless they fall under another category; • Other off-balance sheet items carrying similar risk, as communicated to EBA.
4	• Short-term, self-liquidating trade letters of credit arising from the movement of goods, in particular documentary credits collateralised by the underlying shipment, in case of an issuing institution or a confirming institution; • Other off-balance sheet items carrying similar risk, as communicated to EBA.
5	• Unconditionally cancellable commitments; • The undrawn amount of retail credit lines for which the terms permit the institution to cancel them to the full extent allowable under consumer protection and related legislation; • Undrawn credit facilities for tender and performance guarantees which may be cancelled unconditionally at any time without prior notice, or that do effectively provide for automatic cancellation due to deterioration in a borrower’s creditworthiness; • Other off-balance sheet items carrying similar risk, as communicated to EBA.