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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	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 and 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 - Letter to the Chair of the European Parliament Committee on Economic and Monetary Affairs

Following the Permanent Representatives' Committee meeting of 6 December 2023, which endorsed the final compromise text with a view to agreement, delegations are informed that the Presidency has sent the attached letter, together with its Annexes, to the Chair of the European Parliament Committee on Economic and Monetary Affairs.

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Council of the European Union
General Secretariat

SGS 23 / 005186

Ms Irene TINAGLI
Chair of the Committee on Economic and Monetary Affairs
European Parliament
Rue Wiertz 60
B-1047 Brussels

Brussels, 06. 12. 2023

Subject: 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
and
Proposal for a Directive of the European Parliament ard 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

Dear Ms TINAGLI,

Following the informal negotiations between the representatives of the three institutions, a draft overall compromise package was agreed today by the Permanent Representatives' Committee. I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise package contained in the Annex to this letter (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

On behalf of the Council I also wish to thank you for your close cooperation which should enable us to reach agreement on this file at first reading.

Yours sincerely,

Marcos ALONSO ALONSO
Chair of the
Permanent Representatives Committee

Copy: Ms Mairéad McGUINNESS, Commissioner
Mr Jonás Fernández, European Parliament Rapporteur

Rue de la Loi/Wetstraat 175 – 1048 Bruxelles/Brussel – Belgique/België
Tél./Tel. +32 (0)2 281 83 54

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DIRECTIVE (EU) …/…
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of …

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

(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[1],

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

Acting in accordance with the ordinary legislative procedure,

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1 *OJ C , , p. .*

2 OJ C , , p. .

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Whereas:

(1) Competent authorities, their staff and members of their governance bodies should be independent ***from*** 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 ***members of the competent authority's governance bodies***, act independently and objectively. In this context, minimum requirements should be laid down to prevent conflicts of ***interest and limit "revolving doors" providing in particular cooling-off periods, a prohibition from trading instruments issued by a supervised entity as well as a maximum tenure period for relevant members of governance bodies***. The European Banking Authority (EBA) should issue guidelines addressed to competent authorities on the prevention of conflicts of interests, based on international best practices.

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(1a) Members of staff and of governance bodies subject to cooling-off periods should be entitled to appropriate compensation, the purpose of which should be to compensate for the inability to take up employment with entities subject to the scope of these restrictions over a certain period . The compensation should be proportionate to the length of the relevant cooling-off period and the form of it should be decided by Member States.

(1b) Supervisors should act with the utmost integrity in the exercise of their supervisory function. In order to increase transparency and provide high ethical standards, it is appropriate that members of staff and members of the competent authority's governance bodies submit a declaration of interests on an annual basis. This declaration should disclose information on the member's holdings of financial instruments to reduce the risk arising from conflicts of interest that may result from those holdings and allow competent authorities to manage appropriately those risks. The declaration of interests should be without prejudice to any requirement to submit a wealth declaration under applicable national rules.

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(1c) The purpose of the amendments of Directive 2013/36/EU in connection with supervisory powers, sanctions and third country branches and environmental, social and governance risks, is to further the harmonisation of the banking supervisory framework and, ultimately, deepen the internal market for Banking. Competent authorities should seek to ensure that the supervisory framework is applied to institutions in a proportionate manner and, in particular, they should aim at reducing compliance and reporting costs for small and non-complex institutions to the extent possible, having due regard to the recommendations laid down in the Study of the Cost of Compliance with Supervisory Reporting Requirements published by the EBA in 2021, which targeted a reduction of reporting costs of 10% to 20%.

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(2) Competent authorities should have the necessary power to withdraw the authorisation granted to a credit institution where such a credit institution has been ***determined*** failing or likely to fail***, there is no reasonable prospect that any alternative private sector measures or supervisory action could prevent a failure of such institution within a reasonable timeframe and a resolution action is not necessary in*** the ***public interest***. 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, ***which would ensure its orderly exit from the market,*** and should therefore discontinue the activities for which the authorisation had been granted. ***However, there should be no automaticity between the failing or likely to fail determination and the withdrawal of the authorisation, as for other cases where the competent authority may withdraw the authorisation. Competent authorities should exercise their powers in a manner that is proportionate and that takes into consideration the features of the applicable national insolvency proceedings, including existing judicial procedures. The power to withdraw the authorisation should not be used to prevent the opening, or force the termination, of insolvency proceedings, such as the application of a judicial moratorium or other measures which are conditional upon an active license.***

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(3) The provision of ***core*** banking services ***as defined*** in the ***activities referred to in points 1, 2 and 6 of Annex I to Directive 2013/36/EU should be made conditional on*** an explicit ***and harmonised authorisation*** requirement in Union law***, specifying*** that undertakings established in a third country and seeking to provide ***such core*** 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.

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(3a) The consumption of banking services outside of the Union, as per the WTO Understanding on commitments in financial services, should not be affected. The requirement to establish a branch in the Union should not apply to cases of reverse solicitation, that is where a client or counterparty approaches an undertaking established in a third country at its own exclusive initiative for the provision of banking services, including their continuation, or banking services closely related to those originally solicited and when transposing this Directive, Member States may take measures to preserve clients' acquired rights under existing contracts. Such measures should apply solely for the purpose of facilitating the transition to the implementation of the provisions of this Directive, and should be narrowly framed to avoid instances of circumvention. To prevent the circumvention of the rules applicable to the cross-border provision of banking services by third country undertakings, competent authorities should be able to monitor the provision of those services. That requirement to establish a branch should also not apply to cases of interbank and interdealer transactions Also without prejudice to the authorisation regime provided under Directive 2014/65/EU and Regulation (EU) No 648/2012, that requirement should not apply to cases of third country credit institutions providing investment services and activities in the Union under Annex I, Section A of Directive 2014/65/EU and any accommodating ancillary services such as related deposit taking, granting credit or loans for the purpose of which is to provide services under that Directive, among which the provision of trading of financial instruments or private wealth management services. Nonetheless, the exercise of such exemption should take into account compliance with the AML/CFT rules as defined in [insert reference to AMLD].

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(3b) ***Holding companies and financial holding companies that are parent company of a banking group should remain subject to the identification and approval mechanism set out in Directive (EU) 2019/878. Such mechanism enables competent authorities to bring certain financial holding companies and mixed financial holding companies under the direct scope of their supervision and of their supervisory powers pursuant to Directive 2013/36/EU and Regulation (EU) No 575/2013 to ensure compliance on a consolidated basis. Under specific circumstances, competent authorities should have the discretion to exempt certain holding company or mixed financial holding set up for the purpose of holding participations from approval. In addition, to cater for the specificities of certain banking group, the consolidating supervisor should be able to allow financial holding companies or mixed financial holding companies which are exempted from approval to be excluded from the perimeter of consolidation. However, the power to exclude those entities from the perimeter of consolidation of the banking group should only be exercised in exceptional circumstances, where all the conditions set out in the legislation are complied with, and , to that end, the banking group should demonstrate that holding entity that should be excluded is not involved in, or relevant for, the management of the banking group.***

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(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 ***should*** have at their disposal all the supervisory powers enabling them to cover material operations that can be undertaken by the supervised entities. The ▌ competent authorities should therefore be notified in case a material operation, including acquisitions by supervised entities of material holdings in financial or non-financial ***sector*** entities, material transfers of assets and liabilities from or to ▌ supervised entities, and mergers and divisions involving ▌ supervised entities, undertaken by a supervised entity raises concerns over its prudential profile, or over possible money laundering and terrorist financing activities. Furthermore, the ▌ competent authorities should have the power to intervene in ▌ cases ***of acquisition of material holdings and mergers and divisions***.

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(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) 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.

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(6) In order to ensure that competent authorities ***are able to*** 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, should be limited in time.

(7) In the case of the acquisition of a material ***holding***, 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 ***authority*** within a given period, the operation should be deemed approved.

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(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. ***Acquisitions of holdings***, when considered material, should be assessed by the competent ***authority*** 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-***border*** notifications, smooth exchange of information***, including from AML/CFT authorities,*** and coordination in the assessment.

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(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. ***Without*** proper articulation these provisions could lead to inconsistencies in the assessment undertaken by competent authorities, and ultimately the decisions taken by them.

(11) EBA should be mandated to develop regulatory technical standards**,** implementing technical standards ***and guidelines*** 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 ***ensuring*** that a sufficiently harmonised supervisory methodology allows provisions on the additional powers to be implemented efficiently, with the minimum possible additional administrative burden.

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(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.

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(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 ~~,~~ Directive ***2013/36/EU*** and breaches of Regulation (EU) No 575/2013 of the European Parliament and of the Council[3] ***or decisions taken by a competent authority on the basis of those legal acts***. 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.

[3] 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).

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(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. ***In particular, Member States should be able to impose administrative penalties where the relevant breach is also subject to national criminal law. 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 ***administrative*** penalties and other administrative measures imposed for punitive purposes in ***the*** case of accumulation of administrative and criminal proceedings is limited to what is necessary in view of the seriousness of the breach concerned. To that end, ***Member States should put in place appropriate mechanisms ensuring that*** competent authorities and judicial authorities ***are duly and timely informed where*** administrative ***proceedings*** and criminal proceedings ***are commenced*** against the same natural or legal person***. EBA should be mandated to report on the application*** of administrative measures***, periodic penalty payments*** and penalties.

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(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, ***currently*** the total annual net turnover ***within the meaning of*** Directive 2013/36/EU is neither exhaustive ~~,~~ nor sufficiently clear ~~,~~ to ensure a level playing field in the application of administrative pecuniary penalties. ***To ensure a consistent calculation throughout the Union, Directive 2013/36/EU should provide for a list of*** elements ***to be included in*** the ***calculation*** of ***the*** total annual net turnover~~.~~.

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(17) In addition to administrative ***pecuniary*** penalties, competent authorities should be empowered to impose periodic penalty payments on credit institutions, financial holding companies, mixed financial holding companies and ***on those members of the management body in its management function who are identified as responsible, in accordance with national law, for the breach of the obligation*** to comply with ***national provisions transposing Directive 2013/36/EU,*** their obligations under ~~,~~ Regulation (EU) No 575/2013 or ***under*** a decision ***taken*** by a competent authority ***on the basis of those acts***. Those enforcement measures should be imposed where a breach ~~,~~ is continuing. ***Without prejudice to the procedural rights of the affected persons under applicable law, including their right to be heard, 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 ***requiring a return to compliance***. 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. ***It should be possible for periodic penalty payments to be imposed on a given date and to start applying at a later date.***

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(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 ***and periodic penalty payments. Unless otherwise provided for by Member States, periodic penalty payments should be calculated on a daily basis***.

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(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, ***cause*** serious financial distress or represent a disproportionate percentage of its total annual turnover ***or a natural person's annual income.***

Provided they are identified as being directly responsible for the breach, either individually or in the capacity as member of a collegial body, competent authorities should also ensure that periodic penalty payments are applied to the members of the management body, senior management, key function holders, other material risk takers and other natural persons different from the above mentioned.

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(20) ***In exceptional circumstances, where*** the legal system of the Member State does not allow the administrative penalties provided for in this Directive, ***it should be possible to exceptionally apply*** the rules on administrative penalties ~~,~~ in such a manner that the penalty is initiated by the competent authority and imposed by judicial authorities. ***Nevertheless***, 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.

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(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 ***and increasing*** 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 ***exchange*** information with the competent authorities supervising the other branches and subsidiaries of the same group.

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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.

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(22a) When authorising and supervising third country branches, competent authorities should be able to perform their supervisory functions effectively. To that end they need to have access to all the necessary information on the third country branch's head undertaking from its supervisory authorities of the relevant third country and be able to effectively coordinate its supervisory activities with those of the third country supervisory authorities. Before a third country branch commences its activities, competent authorities should endeavour to conclude an agreement with the supervisory authority of the third country to enable cooperation and information exchange. Such agreement should be based on the model administrative agreements developed by EBA in accordance with Article 33(5) of Regulation (EU) No 1093/2010. Competent authorities should submit information about this agreement to EBA. Where the conclusion of such administrative agreement based on the model developed by EBA is not possible, competent authorities should be able to use other forms of agreements, for example through exchange of letters, to ensure that they can perform their supervisory functions.

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(23) For reasons of proportionality, the ***minimum*** 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 ***where the amount of such retail deposits exceeds a certain threshold***, 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.

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(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[4]. 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 ***1093/2010***.

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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 ***1093/2010*** is adequately reasoned, sets out a detailed description of the assessed matters and is delivered within a reasonable timeframe.

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(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 ***clients or counterparties*** in other Member States in contravention of the internal market rules**,** where they pose a significant risk to the financial stability of the Union or of the Member State where they are established ***or where the aggregate amount of the assets of all third country branches in the Union which belong to the same third country group is equal to or higher than EUR 40 billion or the amount of the third country branch assets in the Member State where it is established is equal to or higher than EUR 10 billion***. Moreover, competent authorities should be required to periodically assess whether third country branches ***have systemic importance where the aggregate amount of the assets of all third country branches in the Union which belong to the same group is*** equal to or higher than EUR ***40 billion***. All the third country branches that belong to the same third country group established in one Member State or across the Union should be ~~,~~ subject to such periodic assessment ***by the respective competent authorities***.

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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 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***, in which case they should provide a reasoned notification to the EBA and the competent authorities of the Member States where the relevant third country group has established other third country branches or subsidiary institutions. In order to consider the Union-wide implications, competent authorities which decide to exercise the power to subsidiarise, should, in advance, consult the EBA and the respective competent authorities***.

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(26) To ***promote*** the consistency of supervisory decisions on a third country group with branches and subsidiaries across the Union, ***Competent authorities should, when performing*** the assessment of systemic importance**,** consult ***EBA*** and competent authorities ***of the Member States where*** the relevant third country group ***has established other*** third country branches ***or subsidiary institutions, in order to assess the financial stability risks that the relevant third country branch may pose for the Member States other than the Member State where it is established***.

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(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.

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(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.

(28a) Notwithstanding currently applicable secrecy rules , the information exchange between competent authorities and tax authorities should be improved. This exchange of information should, nonetheless, be in line with national law, and, where the information originates in another Member State, agreement for disclosure should be reached between the relevant competent authorities.

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(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.

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(30) Regulation (EU) 2019/876[5] 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***, taking into account the principle of proportionality.***

[5] 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).

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(31) The global transition towards a sustainable economy as enshrined in the Paris Agreement[6], 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 private sectors. The European Green Deal[7] 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. ***As those risks can have implications for the stability of both individual institutions and the financial system as a whole, an enhanced regulatory prudential framework that better integrates the related risks is necessary.***

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6 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).

7 COM(2019) 640 final.

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(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[8] acknowledged that climate-related risks are a source of financial risk. The Commission's Renewed Sustainable Finance Strategy[9] emphasises that environmental, social and governance (ESG) risks, and risks ***stemming*** 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. ***The specificity of climate-related and other environmental risks, for example risks stemming from environmental degradation and biodiversity loss, as regards both transition and physical risks, requires in particular to manage those risks with a long-term horizon of at least 10 years.***

[8] 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.

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

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(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 financial stability overall. Competent authorities should also monitor and be empowered to act when there ***are risks arising from transition trends towards the relevant Member States and Union regulatory objectives in relation to environmental, social and governance factors, for example as set out in Regulation (EU) 2021/1119 ("European Climate Law"), the Fit for 55 package and the post-2020 Global Biodiversity Framework, as well as, where relevant for internationally active institutions, third country legal and regulatory objectives***, resulting in risks to their business models and strategies, or to financial stability.

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The powers of competent authorities should also be used to reinforce targets, measures, and actions of institutions' prudential plans where they are considered insufficient to address the ESG risks in the short, medium and long term time horizon and may in that regard pose material risks to their solvability. 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.

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(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 ***financial*** risks arising, in the short, medium and long term, from ***environmental, social and governance factors, including from transition trends towards the*** relevant ***regulatory*** ▌ objectives of the Union-***and Member States, for example as set out*** ▌ in the Paris Agreement***, Regulation (EU) 2021/1119***[10], the Fit for 55 package[11] and the post-2020 Global Biodiversity Framework***, as well as, where relevant for internationally active institutions, third country legal and regulatory objectives***.

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10 ***Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1).***

11 Communication of the Commission COM(2021)550 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.

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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 ***strengthen resilience to the negative impacts of these risks***. The specificities of ESG risks ***mean*** that ***understanding***, 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.

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To achieve this objective, definitions ***should be*** laid down in Regulation (EU) No 575/2013 and EBA ***should be*** 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. ***EBA should base its scenarios on available scientific evidence, building on the work of the Network for Greening the Financial System and the efforts by the Commission to strengthen cooperation between all relevant public authorities with a view to developing a common methodological base, as outlined in point c of Action 5 of the Communication of the Commission of 6 July 2021 on the Strategy for Financing the Transition to a Sustainable Economy.*** Environment-related risks, including ***climate related risks and*** risks stemming from environmental degradation and biodiversity loss, ▌ should take priority in light of their urgency and the particular relevance of scenario analysis and stress testing for their assessment.

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(34a) ***As major providers of funding for businesses and households in the Union, institutions have a relevant role to play in promoting sustainable development across the Union. For the Union to deliver on its overall climate neutrality objective as set out in Regulation (EU) 2021/1119, institutions need to integrate into the definition and implementation of their policies and activities the role of promoting sustainable development. To cater for this process, institutions' business model and strategy must be contrasted against the relevant Union regulatory objectives towards a sustainable economy, for example against the measures prescribed by the European Scientific Advisory Board on Climate Change, to identify their ESG risks from misalignments. Where institutions disclose their sustainability objectives and commitments under other mandatory or voluntary sustainability frameworks, such as under Directive 2013/34/EU, those objectives should be consistent with the specific plans to address the ESG risks they may face, in the short, medium and long term. The competent authorities should assess through their relevant supervisory activities the extent to which institutions face ESG risks and have accompanying management policies and operational actions reflected in the targets and milestones defined in their prudential plans that are consistent with their disclosed sustainability commitments in the context of the process of adjustment towards climate neutrality by 2050. To promote sound and effective risk oversight as well as managerial behaviour in alignment with their long-term strategy on sustainability, the risk appetite of institutions in relation to ESG risks should be an integral part of their remuneration policies and practices.***

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(35) ESG risks can have far-reaching implications for the stability of both individual institutions and the financial system as ***a*** whole. Hence, competent authorities should consistently factor those risks into their relevant supervisory activities, including the supervisory evaluation and review process ***(SREP)*** and the stress testing of those risks. The 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 ***risks*** in supervision, EBA, ***the European Supervisory Authority (***European Insurance and Occupational Pensions Authority***)*** (EIOPA) and the European ***Supervisory Authority (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 institutions. In order to ensure convergence of supervisory practices, EBA should issue guidelines regarding the uniform inclusion of ESG risks in the ***SREP.***

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(35a) ***Crypto-asset markets have grown rapidly in recent years. To address potential risks for institutions caused by exposures to crypto-assets that are not yet sufficiently covered by the existing prudential framework, the Basel Committee on Banking Supervision developed a standard for the prudential treatment of crypto-asset exposures. Part of this standard concerns the risk management by institutions and the application of the*** supervisory review ~~–~~ process ***on institutions. Institutions with direct or indirect exposures to crypto-assets or that provide related services to any form of crypto-asset should be required to have risk management policies, processes and practices in place to appropriately manage risks caused by their exposure to crypto-assets. In particular, in their risk management activities, institutions should consider the crypto-asset technology risks, general ICT and cyber risks, legal risks, money laundering and terrorist financing risks and valuation risks. Competent authorities should be able to take the necessary supervisory actions where the institutions' risk management practices are deemed insufficient***.

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(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 ***systemic*** risks related to climate change. To the extent that the ***institution's*** 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 ***which could also be applied to certain sets or subsets of exposures for instance*** *for* those ***subject to physical and transition risks related to climate change,*** where they consider the introduction of such rate effective and proportionate to mitigate those risks.

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(37) ***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 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. Existing rules do not ensure that there is a timely suitability assessment of members of the management body by the appointing institution. Furthermore, there are currently no rules for the suitability assessment of key function holders*** . 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 ***considerably*** different requirements as regards the suitability assessment across the Union is a particularly ***relevant*** 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 ***more*** consistent and predictable "fit-and-proper" framework. This will foster supervisory convergence, ~~,~~ further ***enable*** trust between competent authorities and ***provide*** more legal certainty to institutions. ***"Fit***-and-proper" ***assessments are an important supervisory element along with other mechanisms such as the supervisory review and evaluation process (SREP) and remuneration rules that together ensure sound governance of institutions.***

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(37a) To ensure sound governance, facilitate independent opinions and critical challenges, and present a variety of views and experiences, the management body should be sufficiently diverse as regards age, gender, geographical provenance and educational and professional background. Gender balance is of particular importance to ensure adequate representation of the population, and should be promoted.

(38) ~~–~~ Having the primary responsibility for assessing the suitability of each member of the management body, ***entities*** should carry out the ***initial*** suitability assessment ***before a new member takes up the position, subject to certain exceptions***, followed by a verification by the competent authorities***. Entities should ensure that information about the suitability*** of the ***members of the*** management body ***remains*** up ***to-date. Entities should communicate that information to the competent authority. As soon as any new facts or other issues that may affect the suitability of*** members of ***the*** management body ***are known, entities*** should ***inform the competent authorities thereof without undue delay. Entities should take the necessary measures if they conclude that a member or a prospective member of the management body does not fulfil the suitability requirements. These requirements should also apply to key function holders.***

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(38a) ***In order to ensure legal certainty and predictability for entities, it is necessary to establish procedural rules for verifying the suitability of members of the management body and key function holders of large institutions by competent authorities. Such procedural rules should enable competent authorities to request any additional information where necessary, including through documentation, interviews and hearings. Information and documents that are necessary for the suitability assessment by the competent authorities, including in the context of the ex ante application by large institutions for members of the management body in its executive function or the chair of the management body in its supervisory function, should be transferred to*** the competent authorities ***by means that are determined by the competent authorities. Competent authorities should re-assess a member's suitability in case the relevant information concerning his or her suitability has changed. Competent authorities should not be required to reassess*** the suitability of ***the*** 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. Competent authorities should have the power to take the necessary measures if they conclude that the suitability requirements are not fulfilled. Competent authorities may request the competent authority for the supervision of anti-money laundering to consult, on a risk-sensitive basis, the relevant information concerning the members of the management body, and to have access to the Central AML/CFT database.***

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(38b) ***Due to the risks posed by large institutions resulting in particular from potential contagion effects, the competent authorities of Member States in which the supervisor's suitability assessment is carried out after the member has taken up the position in the management body, in accordance with national law, should be notified without undue delay as soon as there is a clear intention to appoint a member of the management body in its executive function or the chair of the management body in its supervisory function. Large institutions should in any case ensure that competent authorities receive a suitability application at the latest 30 working days before the individual takes up the position. This ex ante application should be accompanied by all relevant documents and information that is necessary for the assessment, irrespective of whether the suitability assessment by the competent authorities is finalised before or after the person takes up the position. If criminal records or other documents required under national law or listed by competent authorities become available at a later stage, competent authorities should also receive these documents or information without undue delay. This ex ante application should enable the competent authorities to start their analysis and take action in the context of the assessment.***

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Such action can include preventing the appointee from taking up the position as long as the competent authority does not receive sufficient information, or engaging in an enhanced dialogue in case the competent authority has concerns regarding the prospective member 's suitability with a view to ensuring that the candidate is or becomes suitable when taking up his or her position. The EBA should issue guidelines on the modalities of this focused and in-depth dialogue between the competent authority and the large institution with a view to removing any obstacles to the suitability of the candidate in a spirit of cooperation. The ex ante application should allow the competent authorities to engage in an early dialogue with the large institutions on the suitability of members of the management body in its executive function or the chair of the management body in its supervisory function before they take up their position. However, the ex ante application should be without prejudice to the large institution's prerogative and responsibility when ensuring the suitability of the members of the management body, and to any ex post assessments conducted by the competent authorities, where permitted in accordance with national law.

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(38c) ***Furthermore in relation to large institutions, competent authorities should duly consider setting a maximum period for concluding the suitability assessment, at least with respect to the appointment of members of the management body and the appointment of the head*** of internal control functions and the chief financial officer***, for a position*** in such institutions***. Such a maximum period*** should be ***able to be extended where appropriate.***

(38d) ***In any case, the assessment of the members of the management body should be without prejudice to the provisions of the Member States on the appointment of representatives of employees in the management body and on the appointment of members of the management body in its supervisory function by regional or local elected bodies. In these cases, appropriate safeguards should be put in place to ensure the suitability of these members of the management body.***

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(39) ***By 31 December 2029, the EBA, in close cooperation with the ECB, should review and report on the application and efficiency of the 'fit-and-proper' framework, taking also into account the principle of proportionality in particular with respect to small and non-complex institutions*.**

(40a) ***EBA should develop guidelines on the criteria to determine whether there are reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, or there is increased risk thereof in connection with an entity. When developing those guidelines, the EBA should cooperate with the European Securities and Markets Authority and with the authority to be established by a Regulation of the European Parliament and of the Council establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism ('Authority for Anti-Money Laundering and Countering the Financing of Terrorism'), once it is established. In case the Authority for Anti-Money Laundering and Countering the Financing of Terrorism is not operational when those guidelines are prepared, the EBA should adopt those guidelines without having to cooperate with that authority*.**

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(41) In light of the role of the suitability assessment for the prudent and sound management of institutions, it is necessary to ***equip*** competent authorities with new tools to assess the suitability of members of management body ***, senior management*** and key function holders***, such as statements of responsibilities and a mapping of duties***. Those new tools ***should*** 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 ***setting out the roles*** and duties ***of all*** members of the management body ***in its management function***, senior management and key function holders ***and a mapping of duties, including details of the reporting lines, of the lines of responsibility, and of the persons who are part of the governance arrangements of the institution, and of their duties***. Their individual duties ***and responsibilities*** are not always clearly or consistently laid down and there may be situations where two or more roles overlap or where areas of duties ***and responsibilities*** are overlooked because they do not fall neatly under the remit of a single person. The scope of each individual's duties ***and responsibilities*** should be well defined and no ***tasks*** should be left without ownership. Those tools should ensure further accountability of the members of the ***management body in its*** management function***, senior management and key function*** holders.

Furthermore where Member States consider it necessary, they should be able to adopt or retain stricter requirements for such tools.

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(43) ***The*** additional own funds requirement set by ***an*** 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 ***be increased*** as a result ***of the institution becoming bound by the output floor laid down in Regulation (EU) No 575/2013***, all else being equal. Furthermore, ***upon the institution's becoming bound by the output floor***, the competent authority should review the institution's additional own funds requirement and assess, in particular, whether and to what extent such ***requirements are already fully covered by the fact that*** the institution ***is bound by the output floor***. ▌ 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.

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(44) Similarly, upon becoming bound by the output floor, the nominal amount of an institution's CET1 capital required under the systemic risk buffer ***and O-SII buffer could*** increase ***although*** there has ***not*** been ***a corresponding*** 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. ***Such review should take place with the same frequency as the review of the buffers, which is annual for the O-SII buffer and every two years for the*** systemic risk buffer~~-~~.

However, it should be possible for the institution'***s*** competent or designated ***authority***, as applicable, ***to adjust*** the calibration of the ***buffers on a more frequent basis***.

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(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 ***ensure that authorities are empowered to address systemic risks in a timely, proportionate and effective manner and to*** enable the recognition of systemic risk buffer rates set by authorities in other Member States~~.~~. 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***) and (12***) of that Directive should be clarified and made more consistent with the procedures applying for other systemic risk buffer rates, where relevant.

(46a) When drafting technical standards, guidelines and when replying to questions relating to the practical application or implementation, EBA should take into due consideration the principle of proportionality and ensure that those acts can also be applied to by small and non-complex institutions without undue effort,

HAVE ADOPTED THIS DIRECTIVE:

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Article 1

Amendments to Directive 2013/36/EU

Directive 2013/36/EU is amended as follows:

(-1) Article 2(5) is amended as follows:

(-a) point (4) is replaced by the following:

"(4) in Denmark, the 'Danmarks Eksport- og Investeringsfond', the 'Danmarks Skibskredit A/S' and the 'KommuneKredit'";

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(a)point(5) is replaced by the following:

"(5) in Germany, the 'Kreditanstalt für Wiederaufbau', 'Landwirtschaftliche Rentenbank', 'Bremer Aufbau-Bank GmbH', 'Hamburgische Investitions- und Förderbank', 'Investitionsbank Berlin', 'Investitionsbank des Landes Brandenburg', 'Investitionsbank Sachsen–Anhalt', 'Investitionsbank Schleswig-Holstein', 'Investitions- und Förderbank Niedersachsen – NBank', 'Investitions- und Strukturbank Rheinland-Pfalz', 'Landeskreditbank Baden-Württemberg – Förderbank', 'LfA Förderbank Bayern', 'NRW.BANK', 'Saarländische Investitionskreditbank AG', 'Sächsische Aufbaubank – Förderbank', 'Thüringer Aufbaubank', undertakings which are recognised under the 'Wohnungsgemeinnützigkeitsgesetz' as bodies of State housing policy and are not mainly engaged in banking transactions, and undertakings recognised under that law as non-profit housing undertakings;";

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(-b) point (18) is replaced by the following:

(18) in Austria, undertakings recognised as housing associations in the public interest and the 'Österreichische Kontrollbank AG' and 'Oesterreichische Entwicklungsbank – OeEB';

(b) point (24) is deleted;

(c) the following points (25) and (26) are added:

'(25) in Romania, the 'Banca de Investiții și Dezvoltare S.A. ;

(26) in the Czech Republic, the 'Národní rozvojová banka';';

(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 ▌ the institution and includes the persons who ***effectively*** direct the business of the institution;';

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(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 ***with overall responsibility*** for the financial resources management, financial planning and financial reporting of the institution;

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(9c) ***'internal control functions' means risk management, compliance and internal audit functions;***

(9d) 'heads of internal control functions' means the persons at the highest hierarchical level responsible for effectively managing the day-to-day operation of the ~~internal~~ ***control*** functions of the institution;';

(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 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;';

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(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) point (59) is replaced as follows:

'(59) 'internal approaches' means the internal raings based approach referred to in Article 143(1), the internal models approach referred to in Article 221, the internal models method referred to in Article 283, the alternative internal models approach referred to in Article 325az, and the internal assessment approach referred to in Article 265(2) of Regulation (EU) No 575/2013';

(h) the following points (66) to (69a) are added:

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

(67) 'periodic penalty payments' means ***periodic pecuniary enforcement measures***, aimed at ending ongoing breaches ***of national provisions transposing this Directive, breaches of Regulation (EU) No 575/2013 or decisions issued by a competent authority based on those legal acts*** and compelling legal or natural person to return to compliance with ***the infringed provisions or decisions.***

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

(69). "climate neutrality" means the overall climate neutrality objective set out in Article 2 of Regulation (EU) 2021/1119.’;

:

‘(69a) 'crypto-asset' means a crypto-asset as defined in Article 3(1), point (5) of Regulation (EU) 2023/1114 that is not a central bank digital currency;

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(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 ***States*** shall provide ~~-~~the necessary arrangements to ensure that those competent authorities, including their staff and members of their governance bodies, can ***exercise their supervisory powers*** independently and objectively, without seeking or taking instructions~~-~~ from supervised institutions, from any government of a Member State or body of the Union or from any other public or private body. ***Member States shall ensure that governance bodies of the competent authorities are functionally independent of other public and private bodies. These arrangements shall be without prejudice to the arrangements under national law whereby the competent authorities are subject to public and democratic accountability.***

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Member States shall ensure that no member of the governance body who is appointed after [OP please insert the date = 1 day after the transposition deadline of this amending Directive] stays in office for more than fourteen years. Member States shall ensure that members of the governance bodies are appointed based on objective, transparent and published criteria and can be dismissed if they no longer meet the criteria of appointment or have incurred serious criminal convictions. The reasons for dismissal shall be publicly disclosed unless publication is objected by the member of the governance body concerned. Member States shall ensure that competent authorities publish their objectives, are accountable for the discharge of their duties in relation to those objectives and are subject to financial control which does not affect their independence.

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These arrangements shall be without prejudice to the rights and obligations of the competent authorities as stemming from being part of the ***international*** system of financial supervision ***or part of the European systems of financial supervision*** as stemming from Regulation (EU) No 1093/2010, the Single Supervisory Mechanism as stemming from Council Regulation (EU) No 1024/2013 and Regulation (EU) No 468/2014 of the European Central Bank, for the Single Resolution ***Mechanism*** as stemming from Regulation (EU) No 806/2014.

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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, ***and the*** direct or indirect parent undertakings, subsidiaries or affiliates ***of those institutions, with the exception of:***

(i) instruments managed by third parties, provided that the owners of the instruments are precluded from intervening in the management of the portfolio;

(ii) investments in collective investment undertakings;

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The exceptions provided for in points (a)(i) and (a)(ii) shall only apply wherethe third parties and collective investment undertakings do not predominantly invest in instruments issued by or referenced to the entities referred to in point (a).

(b) ~~—~~being hired by or accepting any kind of contractual agreement for the provision of professional services ***for a period of time ("cooling off period")*** with any of the following:

(i) institutions ***in relation to which the member of staff or the member of the governance body has been directly involved with, for the purposes of supervision or decision-making, as well as*** their direct or indirect parent undertakings, subsidiaries or affiliates~~—~~;

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(ii) ***entities*** that provide services to any of the undertakings referred to in point (i)***, unless that staff and those members of the governance bodies of competent authorities*** are strictly precluded from taking part in any provision of those services while the prohibition referred to herein remains in force***;***

(iii) entities conducting lobbying and advocacy activities directed at the competent authority on matters for which the member of staff or the member of the governance body were responsible during their employment.

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The cooling off period shall start from the date on which the direct involvement in the supervision of the institution ceased. Competent authorities shall ensure that the members of staff and the members of governance bodies have no access to confidential or sensitive information in relation to supervised institutions during this cooling off period. In case of hires by entities referred to in points (b)(i) and (b)(ii) the length of the cooling off length shall be no less than six months for members of staff directly involved in the supervision of institutions and no less than twelve months for the members of the competent authority's governance bodies. In case of hires by entities referred to in point (b)(iii) the length of the cooling off length shall be no less than three months for both members of staff directly involved in the supervision of institutions and members of the competent authority's governance bodies.

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Member States may allow competent authorities to subject the staff members and members of the governance bodies referred to in point (b)(i) to a cooling off period in the event of hires by direct competitors of one of the undertakings referred to in point (b)(i). For these purposes, the length of the cooling off period shall be no less than three months for members of staff directly involved in the supervision of the competing institutions and no less than six months for the members of the competent authority's governance bodies.

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Member States shall ensure that the members of staff and members of the competent authority's governance bodies are subject to a declaration of interest. The declaration shall include information on the member's holdings in the form of stocks, equities, bonds, mutual funds, investment funds, mixed-type funds, hedge funds and exchange traded funds, that may raise conflict of interest concerns. The members shall submit the declaration of interest prior to their appointment and subsequently on an annual basis. The declaration of interest shall be without prejudice to any requirement to submit a wealth declaration under applicable national rules;

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Where a member of staff or the governance bodies owns financial instruments that may give rise to conflicts of interest at the time of being hired or appointed or at any time thereafter, the competent authority shall have the power to require on a case-by-case basis that those instruments be sold or disposed of within a reasonable time. Competent authorities shall also have the power to allow on a case-by-case basis that those members referred to in point (a) sell or dispose of financial instruments that they owned at the time of being hired or appointed.'

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By way of derogation from the fifth subparagraph point (b) , Member States may allow competent authorities to apply shorter cooling off periods, with a minimum of three months, for the members of staff directly involved in the supervision of institutions only when a longer cooling off period:

(a) unduly restricts the ability of the competent authority to hire new members of staff with the adequate or necessary skills for the performance of its supervisory functions, in particular taking into account the small size of the domestic labour market; or

(b) constitutes a breach of any relevant fundamental right recognised in the constitution of the Member State, the European Charter of Human Rights, or of any relevant workers' rights as set out in the labour laws of the Member State.

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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. Member States shall decide on the appropriate form of compensation.

EBA shall issue guidelines by [24 months after entry into force] 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.

For the purposes of this Article, 'members of the competent authority's governance bodies' means individuals that form part of the most senior collective decision-making body of the competent authority and who are vested with the power to exercise executive functions regarding the daily management of the supervisory function of the competent authority excluding governors of national central banks.'

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(2a) Article 8a is amended as follows:

(a) in paragraph 1, point b is replaced by the following:

(b) the average of monthly total assets calculated over a period of 12 consecutive months is less than EUR 30 billion, and the undertaking is part of a group in which the total value of the consolidated assets of all undertakings in the group established in the Union , including any of its branches and subsidiaries established in a third country, that individually have total assets of less than EUR 30 billion and that carry out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU is equal to or exceeds EUR 30 billion, both calculated as an average over a period of 12 consecutive months.

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(b) the following paragraph is inserted:

3a. By way of derogation from paragraph 1 of this Article, based on the application received in accordance with that paragraph and the information received in accordance with Article 95a of Directive 2014/65/EU, the competent authority may, after receiving a request from the undertaking, waive the requirement to obtain an authorisation as a credit institution in accordance with Article 8 of this Directive for an undertaking referred to in that paragraph.

Upon receiving a waiver application, the competent authority shall notify EBA thereof. The EBA shall deliver an opinion on that waiver application within one month from the notification by the competent authority. The competent authority shall issue a decision on the waiver application taking into account the EBA opinion and at least the following elements:

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(a) where the undertaking is part of a group, the group structure, the booking practices prevailing within the group and the allocation of assets across the group entities;

(b) the nature, size and complexity of the activities carried out by the undertaking in the Member State where it is established and in the Union as a whole;

(c) the importance of, and systemic risk posed by, the activities performed by the undertaking in the Member State where it is established and in the Union as a whole.

Where the decision deviates from the opinion provided by the EBA, the competent authority shall state the reasons for the deviation in its decision. The competent authority shall notify its decision to the undertaking and to EBA. EBA shall publish that decision, together with the EBA opinion, on its website.

The competent authority shall re-assess its decision every three years.

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(c) the following paragraphs are added:

6a. EBA shall develop draft regulatory technical standards to specify further the elements that are to be considered by a competent authority when deciding to grant a waiver in accordance with paragraph 3a , taking into account in particular the materiality of the counterparty credit risk to which an undertaking is exposed.

EBA shall submit those draft regulatory technical standards to the Commission by ... [18 months after the date of entry into force of this amending Directive].

Power is delegated to the Commission to supplement this Directive 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.

6b. By 31 December 2028, EBA shall submit a report to the Commission on the use of the waiver as referred to paragraph 3a as well as on the use of the power under point 1(b)(iii) of Article 4(1) of Regulation (EU) No 575/2013.

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(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.;’;

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(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 ***or where they are designated as responsible to ensure the group's compliance with prudential requirements on a consolidated basis in accordance with paragraph 4***.

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Competent authorities shall***, on a regular basis, and at least annually ,*** review ▌ the parent undertakings of an institution, ***in order to verify if the institution, the*** entity requesting ~~a~~ ▌authorisation ***or the designated entity has correctly identified any*** undertaking ***that complies*** 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 ***undertakings*** 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.

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Competent authorities shall publish ***on their websites and update on an annual basis, a list of financial holding companies and mixed financial holding companies approved, designated or exempted from approval in the Member State in accordance with this Article. Where an exemption has been granted the list shall also name the credit institution or financial holding company that has been designated in accordance with*** paragraph ***4 as responsible to ensure the group's compliance with prudential requirements on a consolidated basis***.';

(b) paragraph 2 is amended as follows:

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

'2. For the purposes of paragraph 1, financial holding companies and mixed financial holding companies referred to therein shall provide the consolidating supervisor determined in accordance with Article 111 and, where different, the competent authority in the Member State where they are established with the following information:

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(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 ***the*** compliance with the requirements set out in Article 91(1);~~;~~

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

‘Where the ***approval or the exemption from*** approval of a financial holding company or mixed financial holding company ***referred to in paragraphs 3 and 4*** takes place concurrently with the assessment referred to in ***Article 8,*** Article 22 ***or*** Article 27a, the competent authority for the purposes of ***those Articles*** 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. ***The*** assessment period referred to in Article ***22(2***) , second subparagraph, ***or in*** Article 27 ▌a(***3***) shall be suspended ▌ until the procedure set out in this Article is complete.’***;***

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(c) in paragraph 3 the point (c) is replaced by the following:

‘(c) the criteria regarding shareholders and members of credit institutions set out in Article 14 and the requirements laid down in Article 121 are complied with.’;

(d) in paragraph 4 first subparagraph, the introductory part is replaced by the following:

"4. The financial holding company or mixed financial holding company may seek exemption from approval under this Article which shall be granted where all of the following conditions are met:

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(da) in paragraph 4 first subparagraph, point (c) is replaced by the following:

'(c) a subsidiary credit institution or a subsidiary financial holding company or mixed financial holding company approved in accordance with this Article is designated as responsible to ensure the group's compliance with prudential requirements on a consolidated basis and is given all the necessary means and legal authority to discharge those obligations in an effective manner;';

(e) the following paragraph 4a is inserted :

'4a. Without prejudice to paragraph 4, the consolidating supervisor may allow on a case-by-case basis financial holding companies or mixed financial holding companies which are exempted from approval to be excluded from the perimeter of consolidation provided that the following conditions are met:

(i) the exclusion does not affect the effectiveness of the supervision on the subsidiary credit institution, or the group;

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(ii) the financial holding company or mixed financial holding company has no equity exposures other than the equity exposure in the subsidiary credit institution or in the intermediate parent financial holding company or mixed financial holding company controlling the subsidiary credit institution;

(iii) the financial holding company or mixed financial holding company does not make substantial recourse to leverage and does not have exposures which are not related to its ownership in the subsidiary credit institution or in the intermediate parent financial holding company or mixed financial holding company controlling the subsidiary credit institution.';

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(g) paragraph 8 is amended as follows:

(i) the first subparagraph is replaced by the following:

'8. Where the consolidating supervisor is different from the competent authority in the Member State where the financial holding company or the mixed financial holding company is established, the two authorities shall work together in full consultation for the purpose of taking decisions on the approval, exemption from approval and exclusion from the perimeter of consolidation referred to in paragraphs 3 and 4, and the supervisory measures referred to in paragraphs 6 and 7. The consolidating supervisor shall prepare an assessment on the matters referred to in paragraphs 3, 4, 6 and 7, as applicable, and shall forward that assessment to the competent authority in the Member State where the financial holding company or the mixed financial holding company is established. The two authorities shall do everything within their powers to reach a joint decision within two months of receipt of that assessment.';

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(ii) the following subparagraph is inserted after the first subparagraph:

'In the event a joint decision is reached, where the consolidating supervisor is different from the competent authority in the Member State where the financial holding company or the mixed financial holding company is established, the joint decision shall also be implemented or, where permitted under national law, shall directly apply in the Member State where the financial holding company or mixed financial holding company is established.';

(h) in the paragraph 10 the first subparagraph is replaced by the following:

'10. Where approval or exemption from approval of a financial holding company or mixed financial holding company pursuant to this Article is refused, the consolidating supervisor shall notify the applicant of the decision and the reasons therefor within four months of receipt of the application, or where the application is incomplete, within four months of receipt of the complete information required for the decision.;";

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(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 ***and*** definitions **,**and ***shall develop*** 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 = ***18*** 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**.;**’;

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(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

1. Member States shall require undertakings established in a third country as referred to in Article ***47*** 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. ***The requirement laid down in paragraph 1 of this Article shall not apply where the undertaking established in the third country provides the relevant service or activity to a client or counterparty established or situated in the Union that is:***

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(a) 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 ***where such client or counterparty*** 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);

(b a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013;

(c) an undertaking of the same group as that of the undertaking established in the third country.

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Without prejudice to ***point (c)***, where a third -country undertaking ***solicits a client or counterparty, or a potential client or counterparty, referred to in point (a)*** through an entity acting on its ***own*** behalf or having close links with such third country undertaking or ***through*** any other person acting on behalf of such undertaking, ~~,~~ it shall not be deemed ***as*** a service provided at the own exclusive initiative of the client ***or counterparty, or of the potential client or counterparty.***

Member States shall ensure that competent authorities have the power to require credit institutions and branches established in the relevant Member State to provide them with the information they require to monitor the services provided at the own exclusive initiative of the client or counterparty established or situated in the relevant Member State where such services are provided by undertakings in third countries that are part of the same group.

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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 ***and with the exception of any services, activities or products necessary for, or closely related to the provision of the service, product or activity originally solicited by the client or counterparty, including when such, closely related services, activities or products are provided subsequently to those originally solicited.***

4. The requirement laid down in paragraph 1 of this Article shall not apply to services or activities as laid out in paragraph 2 of Article 47 of this Directive, including any accommodating ancillary services such as related deposit taking, granting credit or loans for the purpose of which it is to provide services under Directive 2014/65/EU.

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5. In order to preserve clients' acquired rights under existing contracts, the requirement laid down in paragraph 1 shall be without prejudice to existing contracts that were entered into before the date of application of this paragraph.

6. By [12 months from the date of entry into force of this amending Directive], the EBA shall, after consulting EIOPA and ESMA, review whether any financial sector entity in addition to credit institutions should be exempted from the requirement to establish a branch for the provision of banking services by third country undertakings in accordance with this Article. The EBA shall submit a report thereon to the European Parliament, to the Council, and to the Commission. The report shall take into account financial stability concerns and the impact on the competitiveness of the Union.

Based on that report, the Commission shall, where appropriate, submit a legislative proposal to the European Parliament and to the Council.';

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(6a) in Article 22(2), the first subparagraph is replaced by the following :

'The competent authorities shall acknowledge receipt of notification under paragraph 1 or of further information under paragraph 3 promptly and in any event within ten working days following receipt in writing to the proposed acquirer.';

(6b) Article 23 is amended as follows:

(a) in paragraph 1 the point (e) is replaced by the following:

'(e) 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, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing ([5]) is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.';

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(b) the following subparagraph is added:

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

Competent authorities may object to the acquisition when the proposed acquirer is [located/established?] in a third country 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 of the European Parliament and of the Council or in a country subject to Union restrictive measures and it is assessed by the competent authority that it affects the capacity of the proposed acquirer to have in place the needed practices and processes to comply with the requirements of the AML/CFT regime.';

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

'For the purpose of this paragraph and with regard to the criterion laid down in paragraph 1, point (e) of this Article, a negative opinion by the authorities responsible under Directive (EU) 2015/849 for the supervision of the credit institution, received by the competent authorities within 30 working days of the initial request, shall be duly considered by the competent authority when assessing the proposed acquisition and may constitute a reasonable ground for opposition.';

(c) the following paragraph 6 is added:

'6. EBA shall develop draft regulatory technical standards specifying the minimum list of information to be provided to the competent authorities at the time of the notification referred to in paragraph 1.

For the purpose of the first subparagraph, EBA shall take into consideration Directive (EU) 2017/1132.

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

Power is delegated to the Commission to supplement this Directive 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.';

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

‘CHAPTER 3

Acquisition or divesture of a ***material*** holding

Article 27a

Notification and assessment of the acquisition

1. Member States shall require ***institutions,*** financial holding companies and ▌mixed financial holding companies ***within the scope of*** Article 21a(1) ▌(the ***"***acquirer***"***) ▌ to notify their competent authority ***in advance*** where they intend to acquire, directly or indirectly, a ***material*** holding ▌(the ***"***proposed acquisition***"***)***. The notification shall indicate*** the size of the ***proposed*** holding and the relevant information, as specified in Article 27b(5).

1a. For the purposes of the first paragraph, a holding shall be deemed material where it is equal to 15% or more of the eligible capital of the acquirer.

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1b. For the purposes of paragraph 1, where the acquirer is an institution, the threshold referred to in paragraph 1a shall apply at both an individual level and on the basis of the consolidated situation of the parent institution in the Union . In case the threshold referred to in paragraph 1a is only exceeded at an individual level, the competent authority in the Member State where the acquirer is established shall be notified and shall assess the proposed acquisition. In case the threshold is also exceeded on the basis of the consolidated situation of the parent institution in the Union , the consolidating supervisor, in accordance with Article 111, shall also be notified and assess the proposed acquisition.

1c. Where the acquirer is a financial holding company or a mixed financial holding company as referred to in Article 21a(1) on a sub-consolidated basis, the threshold referred to in paragraph 1a shall apply on the basis of the consolidated situation, and the consolidating supervisor, in accordance with Article 111, shall be the competent authority for the purposes of paragraph 1 of this Article.

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2. The competent ***authority*** shall acknowledge***, in writing, the*** receipt of the notification under paragraph 1 or of any additional information under paragraph 5 promptly and in any event within ~~a~~ ten working days following ~~a~~ receipt of ***the*** notification ***or of the additional information***.

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(***5***) (the ***"***assessment period***"***), to carry out the assessment provided for in Article 27b(1) (the ***"***assessment***"***).

If the proposed acquisition ***concerns*** a qualifying holding in a credit institution as referred in Article 22(1), the acquirer shall also ~~be~~ be subject to the notification requirement and the assessment under that Article. ***In that event, the period for the competent authority to carry out both assessments referred to in the first subparagraph of this paragraph and in Article 22(2) shall expire only when the latter of the relevant assessment periods expires.***

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3a. Where the acquisition of a material holding is conducted between entities of the same group that are subject to Article 113 (6) of Regulation 575/2013 or between entities within the same institutional protection scheme that are subject to Article 113(7) of Regulation 575/2013, the competent authority shall not be required to carry out the assessment provided for in Article 27a(3).

4. The competent ***authority*** shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt ***as*** referred to in paragraph ***2***.

5. The competent ***authority*** 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.

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6. The assessment period shall be suspended between the date of request for additional information by the competent ***authority*** 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 ***authority*** 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 ***authority*** may extend the suspension referred to in paragraph 6 to ***a maximum of*** 30 working days in the following situations:

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

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(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[12] 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 until the procedure set out in Article 21a is complete.

[12] 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).

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9. Where ***the*** competent ***authority decides*** to oppose the proposed acquisition, ***it*** shall, within two working days of completion of the assessment, and ***before the end of*** the assessment period, inform the acquirer in writing, providing the reasons for their objection.

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

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

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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:

‡

(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.

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2. For the purposes of assessing the criterion laid down in paragraph 1, point (c), ~~competent~~ ***authority*** shall consult, in the context of ***its*** verifications, the ***competent*** authorities ***responsible*** for the supervision of the ***acquirer under*** 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 ***of this Article,*** or if the information provided by the acquirer is incomplete ~~despite~~ a request made in accordance with Article 27a***(5)***.

For the purposes of this paragraph ~~,~~ and with regard to the criterion laid down in paragraph 1, point (c), ***a negative opinion*** by the authorities ***responsible under Directive (EU) 2015/849 for the supervision of the acquirer, received by the competent authorities within 30 working days of the initial request, shall be duly considered by the competent authorities when assessing the proposed acquisition and may*** constitute a reasonable ground for opposition.

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4. Member States shall neither impose any prior conditions in respect of the level of holding that must be acquired nor allow ***the*** competent ***authority*** 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(2) to (7), where two or more proposals to acquire ***material*** holdings in the same entity have been notified, the competent authority shall treat the acquirers in a non-discriminatory manner.

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7. EBA shall develop draft regulatory technical standards specifying:

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

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

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

For the purpose of the first sub-paragraph, the EBA shall take into consideration ***Title II of*** Directive (EU) 2017/1132 of the European Parliament and of the Council[13].

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

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EBA shall submit those draft ***regulatory*** technical standards to the Commission by ***...*** [***24*** months from the date of entry into force of this amending Directive].

Power is ***delegated to*** the Commission ***to supplement this Directive 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 27c

Cooperation between competent authorities

1. The competent ***authority*** shall consult ***the authorities entrusted with the public duty of supervising other financial sector entities concerned*** when carrying out the assessment referred to in Article 27***a(3)*** where the entity acquired is one of the following:

   (a) a credit institution, ***an*** insurance undertaking, ***a*** reinsurance undertaking, ***an*** investment firm or ***an asset*** management company**,** authorised in another Member State or in a sector other than that of the proposed acquirer;

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

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(ca) In the case where the acquirer is an institution and the threshold as referred to in Article 27a(1a) is only exceeded at an individual level, the competent authority assessing the proposed acquisition shall notify the consolidating supervisor of the proposed acquisition within ten working days following receipt of the notification by the acquirer, if the acquirer is part of a group and the competent authority in charge of the assessment is different from the consolidating supervisor. The competent authority shall also forward its assessment to the consolidating supervisor.

(cb) In the case where the acquirer is a financial holding company or mixed financial holding company within the scope of Article 21a(1), the consolidating supervisor shall notify the competent authority in the Member State where the acquirer is established of the proposed acquisition within ten working days following receipt of the notification by the acquirer, if this competent authority is different from the consolidating supervisor assessing the proposed acquisition. The consolidating supervisor shall also forward its assessment to that competent authority.

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(cc) In the case where the acquirer is an institution and the threshold as referred to in Article 27a(1a) is exceeded at both individual level and on the basis of the consolidated situation of the parent institution in the Union, the competent authority and consolidating supervisor assessing the proposed acquisition shall seek to coordinate their assessments, in particular with regard to their consultation of the relevant authorities referred to in Article 27c(1).

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(cd) Where the assessment of the proposed acquisition needs to be carried out by the consolidating supervisor referred to in paragraph 1b of Article 27a, and the consolidating supervisor is different from the competent authority in the Member State where the acquirer is established, the two authorities shall work together in full consultation. The consolidating supervisor shall prepare an assessment on the proposed acquisition and shall forward that assessment to the competent authority in the Member State where the acquirer is established. The two authorities shall do everything within their powers to reach a joint decision within two months of receipt of that assessment. The joint decision shall be duly documented and reasoned. The consolidating supervisor shall communicate the joint decision to the acquirer.

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(ce) In the event that a joint decision is not taken within two months of receipt of that assessment, the consolidating supervisor or the competent authority in the Member State where the acquirer is established shall refrain from taking a decision and shall refer the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010. EBA shall take its decision within one month of receipt of the referral to EBA. The competent authorities concerned shall adopt a joint decision in conformity with the decision of EBA.

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.

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2. The competent authorities shall seek to coordinate their ***assessment*** and ensure the consistency of their decisions. To this end, the decision by the competent authority ***responsible for*** the ***assessment*** shall indicate any views or reservations made by the ***other relevant*** competent ***authorities***.

3. EBA shall develop draft implementing technical standards to establish common procedures, ***and*** *forms* and ***shall develop*** 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 **...** [***24*** 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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Article 27d

Notification in the case of divestiture

Member States shall require ***any institution or any financial holding company or*** mixed financial holding ***company within the scope of Article 21a(1)*** to notify the competent ***authority*** where ***it intends*** to dispose, directly or indirectly, of a ***material*** holding ***as determined in accordance with Article 27a(1a)***. 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 ***material*** holding as referred to ***in*** that Article despite the competent ***authority****'s* opposition, Member States shall require ***that*** competent ***authority*** to take appropriate measures. ▌ Where a ***material*** holding is acquired despite opposition by the competent ***authority***, 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.

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CHAPTER 4

Material transfers of assets and liabilities

Article 27f

Notification ~~of~~ material transfers of assets and liabilities

1. Member States shall require institutions, ~~financial~~ holding companies and mixed financial holding companies ***within the scope of*** Article 21a(1) ~~to~~ notify their competent authority ***in advance*** of any material transfer of assets or liabilities which they ~~execute~~ either through a sale or any other type of transaction (the ***"proposed*** operation***"***).

When the ***proposed*** operation involves only ***entities*** from the same group, ***those entities*** shall also be subject to the first subparagraph.

For the purposes of the first and second subparagraphs, each of the ***entities*** involved in the same ***proposed*** operation shall be subject individually to the obligation to notify set out in those subparagraphs.

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2. For the purposes of paragraph 1:

(a) the ***proposed*** operation shall be deemed material for an ***entity*** where it is at least equal to 10 % of its total assets or liabilities, ***unless*** the ***proposed*** operation is performed between entities of the same group, ***in which case*** the ***proposed*** operation ***shall be*** deemed material for an ***entity*** where it ***represents*** at least equal to 15 % of its total assets or liabilities;

(aa) For the purpose of point (a) of paragraph 2, for parent financial holding companies or mixed financial holding companies referred to in paragraph 1, the threshold shall apply on the basis of their consolidated situation;

(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[14], or to be securitised, shall not be taken into account for calculating the percentage in point (a);

[14] 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).

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(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 ***ten*** working days following receipt of the notification.

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Article 27~~i~~

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)~~.~~, the competent authorities ***shall*** take appropriate measures.~~.~~

CHAPTER 5

Mergers and divisions

Article 27j

Definitions

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

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(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;

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(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.

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(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;

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(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);

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(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.

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Article 27k

Notification and assessment of the merger or division

1. Member States shall require ***any institution or any*** financial holding ***company or*** mixed financial holding ***company within the scope of*** Article 21a(1) ▌(the 'financial stakeholders') carrying out a merger or division (the "proposed operation"), to notify ***after the adoption of the draft terms of the proposed operation and*** 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(***5***).

By way of derogation from the first subparagraph, mergers and divisions that result from the application of Directive 2014/59/EU shall not be subject to the obligations laid down in this Chapter.

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For the purpose of the first sub-paragraph in case the proposed operation consists ***of*** 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***, in writing, the*** 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).

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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.

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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) ***at least one of*** the ***financial stakeholders*** 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.

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6. The competent authorities shall, within two working days from the completion of their assessment, issue in writing a ***reasoned*** positive or negative opinion to the financial stakeholders.

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 ***time*** limited.

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10. This Chapter is without prejudice to the application of the Council Regulation (EC) No ***139/2004***[15] 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.

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

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11a. By way of derogation from paragraph 1, when the proposed operation is a merger that only involves financial stakeholders from the same group, including a group of credit institutions that are permanently affiliated to a central body and which is supervised as a group, the competent authority shall not be required to carry out the assessment provided for in Article 27k

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:

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(a) the reputation of entities involved in 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 ***requirements*** 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 ***and*** sound from a prudential perspective;

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(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 (***e***) shall be subject to appropriate monitoring by the competent ***authorities*** until completion of the proposed operation.

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

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3. The competent authorities may issue a negative opinion ***regarding*** 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(3).

With regard to the criterion laid down in paragraph 1, point (f), a negative opinion by the authorities responsible under Directive (EU) 2015/849 for the supervision of the financial stakeholders, received by the competent authorities within 30 working days of the initial request, shall be duly considered by the competent authorities when assessing the proposed operation and may constitute a reasonable ground for ***a*** negative opinion***, as referred to in the first subparagraph of this paragraph***.

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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.

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Article 27m

Cooperation between competent authorities

1. The ▌ competent ***authority*** shall consult ***the authorities entrusted with the public duty of supervising other financial sector entities concerned*** when carrying out the assessment referred to in Article 27l where the proposed operation involves, in addition to the financial stakeholder ***or stakeholders***, entities that are one of the following:

(a) a credit institution, ***an*** insurance undertaking, ***a*** reinsurance undertaking, ***an*** investment firm or ***an asset*** management company**,** authorised in another Member State or in a sector other than that in which the ▌ proposed ***operation is undertaken***;

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(b) a parent undertaking of a credit institution, ***an*** insurance undertaking, ***a*** reinsurance undertaking, ***an*** investment firm or ***an asset*** management company**,** authorised in another Member State or in a sector other than that in which the ▌ proposed ***operation is undertaken***;

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

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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 ***more*** of the entities listed above and involved in the proposed operation.

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

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

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EBA shall submit those draft implementing technical standards to the Commission by **...** [***30*** 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.‘;

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(8) Title VI is replaced by the following:

‘TITLE VI

PRUDENTIAL SUPERVISION OF THIRD COUNTRY BRANCHES AND RELATIONS WITH THIRD COUNTRIES[2]

CHAPTER 1

Prudential supervision of third-country branches

Section I

General provisions

Article 47

Scope and definition

1. This Chapter lays down the ***minimum requirements*** concerning the carrying out in a Member State of ***the following activities by a third-country branch***:

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(a) any of the activities ***referred to in points 2 and 6 of*** Annex I to this Directive by an undertaking established in a third country ***that would qualify as a credit institution or that would fulfil the criteria laid down in points (i)*** to ***(iii) of*** Article 4(1), point (b)~~,~~ of Regulation (EU) ***No*** 575/2013, ***if it were established in the Union;***

(b) the activity referred to in point 1 of Annex I to this Directive by an undertaking established in a third country~~.~~.

2. ~~.~~ where ***an*** undertaking ***established*** in ***a*** third country is ***providing*** activities ***and services*** listed in Annex I, ***Section A of Directive 2014/65/EU and any accommodating ancillary services such as related deposit taking, granting credit or loans the purpose of which is to provide services under that*** Directive***,*** that undertaking ~~.~~ shall ***not*** be ***included into the scope outlined in paragraph 1***.

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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.

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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 ***or originated*** 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;

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(b) the third country branch's authorised activities include taking deposits ***or*** other repayable funds from retail customers***, provided that the amount of such deposits and other repayable funds is equal to or higher than 5% of the total liabilities of the third country branch or the amount of such deposits and other repayable funds exceeds EUR 50 million***;

(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.

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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 ***four*** months from the date on which it started to meet those conditions.

3a. Member States may apply to third country branches authorised in their territory, or to certain categories thereof, the same requirements that apply to credit institutions authorised under this Directive, instead of the requirements set out in this Title. Where the treatment laid down in this paragraph only applies to certain categories of third country branches, Member States shall set out the relevant classification criteria for the purposes herein. Paragraphs (1) to (3) shall not apply to those third country branches, except for the purposes of Article 48q.

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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;

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(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.

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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.

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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.

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Section II

Authorisation and regulatory requirements

Sub-section 1

Authorisation requirements

Article 48c

Minimum conditions for the authorisation of third country branches

1. Member States shall***, in accordance with Article 21c,*** require that third country undertakings establish a branch in their territory before commencing ***or continuing*** 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.

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1a. Competent authorities shall endeavour to conclude administrative agreements or other forms of agreements with third country competent authorities before a third country branch from the respective third country commences its activities in the relevant Member State. Such agreements shall be based on the model administrative agreements developed by EBA in accordance with Article 33(5) of Regulation (EU) No 1093/2010. This requirement shall not apply in cases where third country branches are subject to stricter national requirements. Competent authorities shall submit information about any administrative agreement or other forms of agreement concluded with third country competent authorities to EBA without undue delay.

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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***, at a minimum,*** 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;

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(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***, except for intragroup funding transactions concluded with other third country branches of the same head undertaking and for transactions entered into on a reverse solicitation basis***;

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(dd) the EBA shall monitor operations between the third country branches of the same head undertaking jauthorised in different Member States and shall submit a report to the Commission setting out its findings on those by [OP please insert the date = 48 months from the date of entry into force of this amending Directive].

(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 ***or terrorist financing*** within the meaning of Article ***1(3) and (5)*** of Directive (EU) 2015/849 ▌.

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4. For the purposes of assessing whether the condition laid down in paragraph 3, point (f), is met, competent authorities shall consult the authority ***or authorities*** responsible for supervision of anti-money laundering ***or terrorist financing*** 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. ***Competent authorities may decide that the authorisations of third country branches granted before [12 months from date of application of this amending Directive] shall remain valid, provided that the third country branches that were granted those authorisations comply with the minimum requirements laid down in this Title as amended by [this Directive].***

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5a. ***The*** EBA shall ***issue guidelines by ... [24 months after entry into force of this amending Directive] in accordance with Article 16 of Regulation (EU) No 1093/2010,*** 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.

(ca) the conditions under which competent authorities may rely on information that has already been provided in the process of any prior branch authorisation.

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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.

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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;

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(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 ***an increased*** risk of money laundering or terrorist financing being committed or attempted in relation to the third country branch, its head undertaking or its group.

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

4. ***Member States shall define clear procedures*** for ***the refusal*** or ***the withdrawal of*** a third country branch's authorisation ***in accordance with paragraphs 1, 2 and 3***.

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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, ***2,5***% of the branch's average liabilities as reported for the three immediately preceding annual reporting periods ***or, for newly authorised third country branches, of the branch's liabilities at the time of authorisation,*** in accordance with Sub-section 4, subject to a minimum of EUR 10 million;

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(b) for class 2 third country branches, ***0,5% of the branch's average liabilities as reported for the three immediately preceding annual reporting periods, or, for newly authorised third country branches, of the branch's liabilities at the time of authorisation, in accordance with Sub-section 4, subject to a minimum of*** 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 ***as defined in Article 4(1), point 60, of Regulation (EU) No 575/2013***;

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

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(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 ***held*** in the Member State where the branch is authorised ***with a credit institution that is not part of its head undertaking's group*** 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 ***available for use for the purposes of Article 96 of Directive 2014/59/EU in*** the ***case of*** resolution ▌ of the third country branch ***and for the purposes of the winding-up of the third country branch in accordance with the national law of the Member State***.

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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 **...** [***24*** 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.

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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***[16].

3. Member States shall require third country branches to deposit the liquid assets held to comply with this Article in an account ***held*** in the Member State where the branch is authorised ***with a credit institution that is not part of its head undertaking's group*** or, where permitted under national law, with the central bank of the Member State. ***Where there are*** liquid assets ***remaining*** in the account ***after they have been applied to cover liquidity outflows in accordance with paragraph 1, those remaining liquid assets shall be available for use for the purposes of Article 96 of Directive 2014/59/EU in*** the ***case of*** resolution ***of*** the ***third country branch and for the purposes of the winding-up*** of the third country branch ***in accordance with the national law of the Member State***.

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16 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).

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

Article 48h

Internal governance and risk controls

1. Member States shall require third country branches to have at least two persons ***in the relevant Member State*** effectively directing their business ▌ 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.

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2. Member States shall require class 1 third country branches to comply with Articles 74***,*** 75***,*** Article 76(5)***and Articles 92, 94 and 95***. 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***. Class 2 third country branches shall also comply with articles 92, 94 and 95***.

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.

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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.

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7. Where critical or important functions ***of*** the ***third country branch are carried out by its*** head undertaking, ***it shall be done in accordance with internal arrangements or intragroup agreements, and*** 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 **...** [***30*** months from date of entry into force of this amending Directive].

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Article 48i

Booking requirements

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

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2. Member States shall require third country branches to ▌ develop ***and regularly review and update a policy*** on booking arrangements for the management of the registry book referred to in paragraph 1 for the purposes laid down therein. ***Such policy*** shall be documented and ***approved*** by the relevant governing body of the third country branch's head undertaking. The policy ▌ 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.

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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 ***booked by*** the third country ***branch*** ▌ in the Member State; and

(b) the specific treatment to identify and keep a record ***of off-balance sheet items and*** 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 [***18*** months from the date of entry into force of this amending Directive].

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Power is delegated to the Commission to ***supplement this Directive 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.

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 ***is*** currently ***engaged*** in ***the performance*** of ~~[redacted]~~ activities referred to in Article 47(1)***, without prejudice to the exemptions referred to in Article 48c(3)(d),*** with customers or ***counterparties*** in other Member States~~[redacted]~~; or

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(b) the third country branch meets ***the systemic importance indicators referred to in Article 131(3) or is assessed as being of*** systemic importance ***in accordance with article 48k(3***) and poses ~~a~~ significant ~~a~~ financial stability ***risks in*** the Union or the Member ***state where it is established; or***

(ba) the aggregate amount of the assets of all third country branches in the Union which belong to the same third country group is equal to or higher than EUR 40 billion or the amount of the third country branch assets on their book in the Member State where it is established ***is equal to or higher than EUR 10 billion.***

This power may be used after applying the measures in Articles 48k or 48p, as appropriate, or where the competent authority can justify, based on grounds other than those listed under points (a) to (ba) of this paragraph, that those measures would be insufficient to address the material supervisory concerns.

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2. Before ***exercising*** the ***power*** referred to in paragraph 1, competent authorities shall consult the ***EBA and*** competent authorities of the Member States where the relevant third country group has ***established*** other third country branches ***or*** subsidiary institutions.

For the purposes of points b and ba of paragraph 1, and when conducting the assessment referred to in Article 48k, the competent authorities, or where appropriate designated authorities, shall take into account appropriate criteria of systemic importance of third country branches, which shall include in particular:

(a) the ***size*** of ~~the~~ the third country branch ~~;~~;

(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;

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(d) the substitutability of the activities, services or operations conducted ~~,~~ or 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 ***the*** liquidity ***of the financial system of that Member State*** or the payment, clearing and settlement systems in the ***in the*** Union and ~~,~~ Member State where it is established;

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

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(***ha***) the ***role and importance*** of the third country branch ***in the context of resolution or winding up based on information from the resolution authority.***

(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;

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Article 48k

Assessment of systemic importance and requirements on systemic third country branches

1. The third country branch ~~shall~~ be subject to the assessment laid down in paragraph 2 of this Article where ***all branches in the Union that belong to the same third country group have an*** aggregate amount of assets ~~in~~ in the Union as reported in accordance with Sub-section 4 ~~equal~~ equal to or higher than EUR ***40*** 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.

1a. The asset threshold referred to in the first subparagraph shall not include the assets held by the third country branch in connection with central bank market operations entered into with ESCB central banks.

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2. ***Each competent authority responsible for the supervision of a third country branch which belongs to a third country group where all branches in the Union have an aggregate amount of assets in the Union equal to or higher than EUR 40 billion*** shall assess whether the third country ***branch under its supervision has*** systemic importance ~~,~~ and ***poses significant risks for the financial stability of the Union or*** for the Member States where ***it is established***. For those purposes, competent authorities shall***, in particular, have regard to*** the indicators of systemic importance referred to in Article 48j(4) and Article 131(3).

3. ***As part of this assessment, the competent authority or, where appropriate, the designated authority, shall consult the EBA and competent authorities of the Member States*** where the ***relevant*** third country group has ***established other*** third country branches ***or*** subsidiary institutions~~.~~***, in order to assess the financial stability risks that the relevant third-country branch may pose for the Member States other than the*** Member State ~~,~~ where ~~.~~ ***it is established***.

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The competent authority or, where ***appropriate,*** the ***designated authority,*** shall provide ***its reasoned assessment of systemic importance of the third country branch for the Union or the Member State where it is established to the EBA and competent authorities of the Member States where the relevant third country group has established other third country branches or subsidiary institutions.***

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Where the competent authorities who are consulted disagree with the assessment of systemic importance of the third country branch, they shall inform the competent authority who has conducted the assessment within ten working days from receiving the assessment. The competent authorities, with the assistance of the EBA, shall do their best endeavours to reach consensus on the assessment referred to in paragraph 2 and, where applicable, on the targeted requirements referred to in paragraph 4 by no later than three months from the date on which competent authority or, where appropriate, the designated authority, raised its objection. After this period, the competent authority responsible for the supervision of the third country branch under assessment shall decide on the assessment of systemic importance of the third country branch and on the targeted requirements referred to in paragraph 4.

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4. ***Where appropriate to address the risks identified, the competent authority, or where appropriate the designated authority, may subject*** the third country ***branch*** to ***targeted requirements that may include:***

(a) to require ***that the relevant third country branch*** restructure ***its*** assets or activities in ~~a~~ such a manner that they cease to qualify as systemic in accordance with paragraph 2 of this Article ***or that they cease to pose an undue risk to the financial stability of the Union or the Member States where it is established; or***;

(***b***) to impose additional ***prudential*** requirements on the ***relevant*** third country ***branch.***

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Where the competent authority or, where ***appropriate, the designated authority, considers that a third country branch is systemic, without exercising any of the powers*** referred to in ~~point~~ (***a***) ~~***of the first subparagraph of this paragraph or in Article 48j, it shall provide a reasoned notification to the EBA***~~ and ~~competent~~ authorities ***of*** the ***Member States*** where ~~the~~ ***relevant third country group has established other*** third country branches ***or*** subsidiary institutions.

5. By 31 December 2028 EBA shall report to the European Parliament, to the Council and to the Commission, on:

(a) The assessment laid down in the third paragraph of this article, in particular as regards the identification of third country branches of the same head undertaking and the functioning of the consultation process therein;

(b) The use of supervisory powers laid down in the fourth paragraph of this article and in Article 48j;

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Sub-section 4

Reporting requirements

Article 48l

Regulatory ▌ ***and*** financial ***information on the third country branch*** and ***on the*** head undertaking ▌

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 ***and the assets and liabilities originated by the third country branch***, 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);

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(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/***EU***;

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

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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*[17] 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;

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(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 ***clients*** established or situated in the Union on the basis of reverse solicitation of services in accordance with Article 21c of this Directive.

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3. The reporting obligations laid down in this Article shall not prevent competent authorities from imposing additional 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.

Article 48m

Standard forms and templates and frequency of reporting

1. EBA shall develop draft implementing technical standards to specify the uniform formats, definitions, and the frequency of reporting***, and shall develop the IT solutions*** 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.

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EBA shall submit those draft implementing technical standards to the Commission by **...** [***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.

2. The regulatory and financial information referred to in this Article shall be reported at least ***twice a year*** 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.

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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.

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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.

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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).

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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.

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6. ***The*** EBA shall ***issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010,*** 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.

(ba) the authorities responsible for supervision of anti-money laundering in the Member State in accordance with Directive (EU) 2015/849 in the context of the application of Articles 27b (2), 48c (4) and 48d (4).

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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.

The EBA shall ***issue*** those ***guidelines*** by***...*** [***24*** months ***after*** the date of entry into force of this amending Directive].

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

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(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;

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(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.

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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;

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(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 institutions 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.

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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.

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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 ***paragraphs*** 2 to 6 of this Article.

EBA shall submit those draft ***regulatory*** technical standards to the Commission by **...** [***18*** 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.

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Article 48r

Notification 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.

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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.

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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

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(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.

‘;

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(8a) in Article 53 (1), subparagraph 2 is replaced by the following:

Confidential information which such persons, auditors or experts receive in the course of their duties may be disclosed only in summary or aggregate form, such that individual credit institutions cannot be identified, without prejudice to cases covered by criminal or taxation law;'

(8b) in Article 56 the following subparagraph is added:

'Article 53(1) and 54 shall not preclude the exchange of information between competent authorities and tax authorities in the same Member State . Where the information originates in another Member State, it shall only be disclosed in accordance with the first sentence of this subparagraph with the express agreement of the competent authorities which have disclosed it;'

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(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**,** of Regulation (EU) No 575/2013 ***or of decisions issued by a competent authority on the basis of those acts***, 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.

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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***, the competent authority may,*** in the event of a breach of national provisions transposing this Directive**,** of Regulation (EU) No 575/2013 ***or of decisions issued by a competent authority based on those acts, apply*** administrative penalties, periodic penalty payments and other administrative measures ~~–~~ to the members of the management body***, senior management, and key function holders, other staff whose professional activities have a material impact on the institution's risk profile within the meaning of Article 92(3) of this Directive*** and~~–~~ other natural persons***, provided they*** are responsible for the breach ***under national law***.

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

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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);

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(vi) ***third parties to whom the entities referred to in points (i) to (iv) have outsourced functions or activities, including ICT third-party service providers referred to in Chapter V of Regulation (EU) 2022/2554 of the European Parliament and of the Council;***

(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;

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(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) ***conduct***, subject to other conditions set out in Union law, 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.';

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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.

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Article 66

Administrative penalties, periodic penalty payments and other administrative measures for breaches of authorisation and requirements for acquisitions or ***divestiture*** of ***material*** 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;

(***aa) at least one of the activities referred to in point (1)(b) of Article 4(1) of Regulation (EU) No 575/2013 and meeting the threshold indicated in that Article is carried out without being authorised as a credit institution, except for entities requesting the waiver in Article 8a [of the Directive];***

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(b) activities as a credit institution are commenced without obtaining prior authorisation in breach of Article ***8***;

(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;

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(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 ***legal person disposing of the qualifying holding***, 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) ***fails*** 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) ***fails to notify the relevant competent authority of a direct or indirect acquisition of a material holding*** in breach of that Article;

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(g) any of the parties referred to in Article 27d ***fails to notify the relevant competent authority of a direct or indirect disposal*** of a ***material*** holding that exceeds ***15% of the eligible capital of the institutions as*** referred to in Article 27d ;

(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(***1***) engages in a process of merger or division in breach of that Article.

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2. Member States shall ensure that in the cases referred to in paragraph 1, the measures that 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;

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(b) periodic penalty payments:

(i) in the case of a legal person, periodic penalty payments of up to 5 % of the average daily ***net*** 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***; the periodic penalty payment*** 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 ***50 000 or, in those Member States whose currency is not the euro, the corresponding value in the national currency on... [the date of entry into force of this amending Directive],*** which, in the case of an ongoing breach, the natural person shall be obliged to pay per day of ***breach,*** 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.

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(iia) Member States may set a higher maximum amount for periodic penalty payments to be applied per day of breach.

(iib) By way of derogation from Article 66(2) point (b), Member States may apply periodic penalty payments on a weekly or monthly basis. In this case, the maximum amount of periodic penalty payments to be applied for the relevant weekly or monthly period when a breach takes place shall not exceed the maximum amount of periodic penalty payments that would apply on a daily basis in accordance with Article 66(2) point (b) for the relevant period. Periodic penalty payments may be imposed on a given date and start applying at a later date.

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(c) other administrative measures:

(i) a public statement which identifies the natural person, institution, financial holding company**,** mixed financial holding company ***or*** intermediate ***EU*** 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 ▌ban ***against*** a member of the institution's management body or any other natural person who is held responsible for the infringement from exercising functions in ***institutions;***

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3. The total annual net turnover referred to in paragraph 2, points (a)(i) and (b)(i), ~~of~~ this Article shall be ***the sum of*** the ***following items, determined in accordance with Annex III and Annex IV*** of Regulation (EU) No ***2021/451:***

(a) interest income;

(b) interest expenses;

(c) expenses on share capital repayable on demand;

(d) dividend income;

(e) fee and commission income;

(f) fee and commission expenses;

(g) gains or losses on financial assets and liabilities held for trading, net;

(h) gains or losses on financial assets and liabilities designated at fair value through profit or loss, net;

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(i) gains or losses from hedge accounting, net;

(j) exchange differences [gain or loss], net;

(k) other operating income;

(l) other operating expenses.

For the purposes of this Article, the ~~┼~~ basis for the calculation shall be the most recent ~~┼~~ yearly supervisory financial information ~~▌~~ which produces an indicator above zero. Where the ***legal person referred to in paragraph 2 is not subject to the Commission Implementing Regulation (EU) 2021/451, the relevant total annual net turnover shall be the total annual net turnover or the corresponding type of income in accordance with applicable accounting framework. 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 ***net*** turnover referred to in paragraph (2), point (b)(i), shall be the total annual net turnover referred to in paragraph 3 divided by 365.';

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(10) Article 67 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) ***point*** (d) ***is*** 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;***’;***

(ia) points (e), (f), and (i) are deleted;

(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;’;

(iia) points (k) and (l) are deleted

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(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 ***repeatedly*** fails to comply with ~~a~~ a decision ***imposed*** by the competent authority ***in accordance with*** national provisions transposing Directive 2013/36/EU or ***in accordance with*** 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;

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(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;

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(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 ***Article*** 430(1) ***to*** (3) and in ***Article*** 430a 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;

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(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 ***that*** 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;

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(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 ***net*** 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***.*** ***The periodic penalty payment 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 ***net*** turnover referred to in this paragraph shall be the total annual net turnover divided by 365.

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(ii) in the case of a natural person, periodic penalty payments of up to EUR ***50 000 or, in those Member States whose currency is not the euro, the corresponding value in the national currency on... [the date of entry into force of this amending Directive],*** which, in the case of an ongoing ***breach***, the natural person shall be obliged to pay per day of ***breach,*** 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;

(iia) Member States may set a higher maximum amount for periodic penalty payments to be applied per day of breach.

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(iib) By way of derogation from Article 67(2) point (b), Member States may apply periodic penalty payments on a weekly or monthly basis. In this case, the maximum amount of periodic penalty payments to be applied for the relevant weekly or monthlyperiod when a breach takes place shall not exceed the maximum amount of periodic penalty payments that would apply on a daily basis in accordance with Article 67(2) point (b) for the relevant period. Periodic penalty payments may be imposed on a given date and start applying at a later date.

(c) other administrative measures:

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

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(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 ▌ 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 ***institutions***;

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(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 ***the sum of*** the ***following items, determined in accordance with Annex III and Annex IV*** of Regulation (EU) No ***2021/451:***

(a) interest income;

(b) interest expenses;

(c) expenses on share capital repayable on demand;

(d) dividend income;

(e) fee and commission income;

(f) fee and commission expenses;

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(g) gains or losses on financial assets and liabilities held for trading, net;

(h) gains or losses on financial assets and liabilities designated at fair value through profit or loss, net;

(i) gains or losses from hedge accounting, net;

(j) exchange differences [gain or loss], net;

(k) other operating income;

(l) other operating expenses.

For the ***purposes*** of this Article, the basis for the calculation shall be the most recent yearly supervisory financial information which produces an indicator above zero. Where the ***legal person referred to in paragraph 2 is not subject to the Commission Implementing Regulation (EU) 2021/451, the relevant total annual net turnover shall be the total annual net turnover or the corresponding type of income in accordance with the applicable accounting framework . 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.

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4. The average daily ***net*** 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 administrative measures,*** 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;

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(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.

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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.

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 ***related to*** 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.

4. Member States shall ***have in place appropriate mechanisms ensuring that*** competent authorities and judicial authorities ***are duly and timely informed where*** administrative ***proceedings*** and criminal ***proceedings are commenced against the same natural or legal person that may be held responsible for the same conduct in both*** proceedings.

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

(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;

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

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(***ea)*** ***best practices developed by some competent authorities which might be of benefit for other competent authorities to adopt in the area of administrative measures, periodic penalty payments and penalties;***

(eb) ***the effectiveness and the degree of convergence reached with regard to the enforcement of national provisions transposing the Directive and Regulation No 575/2013, including the administrative measures, periodic penalty payment and penalties imposed against legal or natural persons identified as responsible of the breaches under national law.***

(12) in Article 73, the first paragraph 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***. Institutions shall explicitly take into account the short, medium and long term for the coverage of ESG risks***.';

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(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 ***—***, including environmental, social and governance risks ***in the short, medium and long term****;*

(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***, including by taking into account the institution’s risk appetite in terms of environmental, social and governance risks***.

The remuneration policies and practices referred to in the first subparagraph***, point (d),*** shall be gender neutral.’;

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(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.

Member States may, taking into consideration the principle of proportionality, allow the management bodies of small and non-complex institutions to review the strategies and policies referred in paragraph 1 every two years.

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

‘Member States shall ensure that the management body develops ***and monitors the implementation of*** specific plans***,*** quantifiable targets ***and processes*** to monitor and address the ***financial*** risks arising in the short, medium and long-term from ***ESG factors, including those arising from the process of adjustment and transition trends towards*** the relevant ***Member States and*** Union ***regulatory*** objectives ***and legal acts*** in relation to ***ESG factors in particular those set out in Regulation (EU) 2021/1119 (European Climate Law), as well as, where relevant, third country objectives and regulations.***

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The targets and measures to address the ESG risks included in the plans referred to in the first subparagraph shall consider the latest reports and measures prescribed by the European Scientific Advisory Board on Climate Change, in particular in relation to the achievement of the climate targets of the Union. Where the institution discloses information on ESG matters in accordance with Directive 2013/34/EU the plans referred to in the first subparagraph shall be consistent with the plans referred to in Article 19a or Article 29a of that Directive. In particular, the plans referred to in the first subparagraph shall include actions with regards to the business model and strategy of the institution that are consistent across both plans.

Member States shall ensure a proportionate application of the first and second subparagraphs for the management body of small and non-complex institutions, indicating in what areas a waiver or a simplified procedure may be applied.';

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(ba) in paragraph 4, the second subparagraph is replaced by the following:

'The management body in its supervisory function and, where one has been established, the risk committee shall determine the nature, the amount, the format, and the frequency of the information on risk which it is to receive. In order to assist in the establishment of sound remuneration policies and practices, the risk committee shall, without prejudice to the tasks of the remuneration committee, examine whether incentives provided by the remuneration system take into consideration risks, including those resulting from impacts of environmental, social and governance factors, capital, liquidity and the likelihood and timing of earnings.';

(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*, 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.

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Member States shall ensure that***:***

(a) the internal control functions ensure that all material risks are ***properly*** identified, measured and ~~,~~ reported***;***

(b) the internal control functions ***provide a comprehensive view of the whole range of risks that the institution is exposed to;***

(c) ***the risk management function is*** actively involved in elaborating the institution's risk strategy and in all ***its*** material risk management decisions and ***has control over the effective implementation of the risk strategy;***

(d) ***the internal audit function performs an independent review of the effective implementation of the institution's risk strategy.***

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(e) the compliance function assesses and mitigates compliance risk and ensure that the institution's risk strategy takes into account compliance risk and that compliance risk is adequately taken into account in all material risk management decisions.

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* ***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).';***

(d) the following paragraph is added:

'5a. Member States shall ensure that the internal control ***functions:***

(a) have direct access to the management body in its supervisory function***;***

(b) can report directly to the management body in its supervisory function**.**

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The internal control functions shall exercise the functions referred to in the first subparagraph independently from ***the*** members of the management body in its management function ***and from*** senior management, and ***shall in particular be able to*** raise concerns and warn ***the management*** body ***in its supervisory function*** where appropriate ***or*** where specific risk developments affect or ***can*** 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 ***appointing*** a specific person for ***the risk management function or the compliance function***, another senior person ***that performs other tasks*** within the institution may ***fulfil*** the responsibilities for ***the compliance or risk management*** functions, provided ***that:***

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(i) there is no conflict of interest***;***

(ii) the person responsible for the risk management function and the compliance function possesses the knowledge and expertise needed for the different areas concerned; and

(iii) the person responsible for the risk management function and the compliance function has the time needed to perform both control functions correctly.

The internal audit function shall not be combined with any other business line or control function of the institution.

The heads of the internal control functions shall not be removed without prior approval of the management body in its supervisory function***.";***

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(14a) Article 77 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. Competent authorities shall encourage institutions, taking into account their size, internal organisation and the nature, scale and complexity of their activities, to develop internal market risk assessment capacity and to increase the use of internal models for calculating own funds requirements for portfolio of trading book positions, together with internal models to calculate own funds requirements for default risk where their exposures to default risk are material in absolute terms and where they have a large number of material positions in traded debt or equity instruments of different issuers.

This Article shall be without prejudice to the fulfilment of the criteria laid down in Part Three, Title IV, Chapter 1b, Sections 1 to 3, of Regulation (EU) No 575/2013.";

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(b) the first subparagraph of paragraph 4 is replaced by the following:

'4. EBA shall develop draft regulatory technical standards to define the concept of 'exposures to default risk which are material in absolute terms' referred to in the first subparagraph of paragraph 3 and the thresholds for large numbers of material counterparties and positions in traded debt or equity instruments of different issuers.';

(15) Article 78 is amended as follows:

(a) the title is replaced by the following:

'Supervisory benchmarking of approaches for calculating own funds requirements';

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(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 ***portfolios ; provided that the size of the institutions' on- and off-balance-sheet business that is subject to market risk is equal to or more than EUR 500 million in accordance with Article 325a(1), point (b), of that Regulation***;

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(c) that institutions permitted to use internal approaches under Part Three, Title II, Chapter 3 of Regulation (EU) No 575/2013, as well as ***relevant*** 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 ***portfolios*** , 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;

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(iii) institutions perform the valuation of assets and off-balance sheet items in conformity with accounting standards under Directive 86/635/EEC* 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***. These results shall be submitted at least annually*** to the competent authorities***.*** EBA ***may*** conduct a supervisory benchmarking exercise ***every two years for each approach referred to in paragraph 1, points (a), (b) and (c)*** after the exercise has run five times ***for each single approach***.

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* 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).';

(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 ***at least*** the ***same*** frequency ***as the EBA exercise*** referred to in paragraph 1, second subparagraph, paying particular attention to:';

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(ii) ***point (b) is replaced by the following:***

'(b) approaches where there is particularly high or low variability, and also where there is a significant and systematic under-estimation of own funds requirements.;';

(iii) 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:';

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(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 ***relevant*** 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 ***relevant*** institutions EBA shall take into account proportionality considerations.’;

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(15a) in Article 79, paragraph 1, the following point is added:

'(e) institutions conduct ex-ante assessments of any crypto-asset exposures they intend to take on and of the adequateness of existing processes and procedures to manage counterparty risks, and report on those assessments to their competent authority;';

(15b) Article 81 is replaced by the following:

'Article 81

Concentration risk

Competent authorities shall ensure that the concentration risk arising from exposures to each counterparty, including central counterparties, groups of connected counterparties, and counterparties in the same economic sector, geographic region or from the same activity or commodity, the application of credit risk mitigation techniques, and including in particular risks associated with large indirect credit exposures such as a single collateral issuer, is addressed and controlled including by means of written policies and procedures. For crypto-assets without an issuer, the concentration risk shall be considered in terms of exposure to the crypto-assets with similar features.';

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(15c) in Article 83, the following paragraph is added:

'4. Competent authorities shall ensure that institutions conduct ex-ante assessments of any crypto-asset exposures they intend to take on and of the adequateness of existing processes and procedures to manage market risks, and report on those assessments to their competent authority.';

(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 ***arising*** from outsourcing ***arrangements and direct and indirect exposures to crypto-assets and crypto-asset services providers***, and to cover low- frequency high-severity events. Institutions shall articulate what constitutes operational risk for the purposes of those policies and procedures.'***;***

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(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 ***the short, medium and long term***.

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.

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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. ***Competent authorities shall ensure that for the testing, institutions use credible scenarios, based on the scenarios elaborated by international organisations.***

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4. Competent authorities shall assess and monitor developments of institutions' practices concerning their environmental, social and governance strategy and risk management, including the plans***, quantifiable targets and processes to monitor and address the ESG risks arising in the short, medium and long-term,*** to be prepared in accordance with Article ***76(2). This assessment shall take*** into account ***the institutions'*** sustainability related product offering, ***their*** transition finance policies, related loan origination policies, and environmental, social and governance related targets and limits. ***Competent authorities shall assess the robustness of those plans as part of the supervisory review and evaluation process.***

Where relevant, for the assessment referred to in the first subparagraph, Competent authorities may cooperate with authorities or public bodies in charge of climate change and environmental supervision.

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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 ***ESG*** risks;

(b) the content of plans to be prepared in accordance with Article ***76(2)***, which shall include specific timelines and intermediate quantifiable targets and milestones, in order to ***monitor and*** address the ***financial*** risks ***stemming*** from ***ESG factors, including those arising from the process of adjustment and*** transition trends towards ***the relevant Member States and Union regulatory objectives*** in relation to ***ESG factors, in particular the objective to achieve climate neutrality by 2050 as set out in Regulation (EU) 2021/1119, as well as, where relevant for internationally active institutions, third country legal and regulatory objectives***;

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(c) qualitative and quantitative criteria for the assessment of the impact of ***ESG*** risks on the ***risk profile and solvency*** of institutions in the short, medium and long term;

(d) criteria for setting the scenarios ▌ referred to in paragraph 3, including the parameters and assumptions to be used in each of the scenarios***,*** specific risks ***and time horizons;***

Where relevant, the methodologies and assumptions sustaining the targets, the commitments and strategic decisions disclosed by the content of the plans referred to in Directive 2013/34/EU, or other relevant disclosure and due diligence frameworks, shall be consistent with the criteria, methodologies and the targets as mentioned in (a), (b), (c) and (d) of this paragraph and shall be consistent with also the assumptions and commitments included in the plans.

EBA shall publish ***the*** guidelines ***referred to in the first subparagraph by ... [***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 ***ESG risks*** as well as the ***development*** of the Union ***regulatory objectives*** on sustainability.';

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(18) Article 88 is amended as follows:

(a) in paragraph 1, ***first subparagraph,*** 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) ~~–~~ the following paragraph 3 is added:

‘3. ***Without prejudice to the overall responsibility of the management body as a collegial body,*** Member States shall ensure that institutions draw up, maintain and update individual statements setting out the roles and duties of ***all members*** of the management body ***in its management function***, senior management and key function holders and a mapping of duties, including details of the reporting lines~~,~~ ***of*** the lines of responsibility, and ***of*** the persons who are part of the governance arrangements as referred to in Article 74 (1) and ***of*** their duties ~~–~~.

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Member States shall ensure that the statements of duties and the mapping of the duties are made available ***at all time*** and communicated ***including to obtain authorisation as referred in Article 8,*** in due time, upon request, to the competent authorities.

‘

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(19) Article 91 is replaced by the following:

‘Article 91

Management Body and suitability assessment

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 ***sufficiently*** good repute***, act with honesty, integrity and independence of mind*** and possess sufficient knowledge, skills and experience to perform their duties and fulfil the requirements set out in paragraphs 2 to ***6*** of this Article***, except as regards special managers appointed by resolution authorities under Article 35 (1) of the Directive 2014/59/EU and temporary administrators appointed by competent authorities under article 29 (1) of the Directive 2014/59/EU. The absence of a criminal conviction or of ongoing prosecutions for a criminal offence shall not in itself be sufficient to fulfil the requirement to be of good repute and act with honesty and integrity.***

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1a. The entities shall ensure that members of the management body fulfil the criteria and requirements set out in paragraphs (2) to (6) at all times and shall assess the suitability of members of the management body taking into account supervisory expectations, before they take up their position and periodically, as laid down in applicable laws and regulations, guidelines and internal suitability policies.

However, where the majority of the members of the management body is to be replaced at the same time by newly appointed members and the application of the first subparagraph would lead to a situation where the suitability assessment of the incoming members would be carried out by the outgoing members, Member States may allow the assessment to take place after the newly appointed members have taken up their position. When submitting the application to the competent authority, in accordance with paragraph 1d, the entity shall also confirm the existence of these conditions.

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1b. Where the entities conclude, based on the internal suitability assessment in paragraph 1a, that the member or the prospective member concerned does not fulfil the criteria and requirements set out in paragraph 1, the entities shall:

(a) ensure that the prospective member concerned does not take up the position considered, in the case that the internal suitability assessment is completed before that the prospective member takes up the position; or

(b) remove such members from the management body, in a timely manner; or(c) take additional measures necessary to ensure, in a timely manner, that such member are or become suitable for the position concerned.

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1c. 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 authority~~ies~~. The information shall be provided to the competent authority through means determined by the competent authority.

1ca. Member States shall at least ensure that for the following entities, the competent authority receives a suitability application without undue delay, and as soon as there is a clear intention to appoint a member of the management body in its executive function or the chair of the management body in its supervisory function, and in any case at the latest 30 working days before the prospective members take up the position:

(a) the EU parent institution that qualifies as large institution;

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(b) the parent institution in a Member State that qualifies as large institution; except where it is affiliated to a central body;

(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;

(da) large subsidiaries, as defined in Article 4(1), point (147), of Regulation EU 575/2013;

(e) 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 within their group, except those falling under Article 21a(4).

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The suitability application referred to in the first subparagraph shall be accompanied by:

(a) a suitability questionnaire and a curriculum vitae;

(b) the internal suitability assessment, unless the second subparagraph of paragraph 1a applies;

(c) criminal records, as soon as they become available;

(d) any other documents required under national law as soon as they become available;

(da) any other documents listed by competent authorities as soon as they become available; and

(e) an indication of the date of the appointment and the date on which the duties will be effectively taken up.

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The entities shall provide the suitability application and the accompanying documents to the competent authority through means determined by the competent authority.

In case the competent authority does not have sufficient information to conduct the suitability assessment based on the items listed in the second subparagraph of this paragraph, it may require that the prospective member does not take up his/her position before the required information has been provided, unless the competent authority is satisfied that it is not possible for such information to be provided. Where the competent authority has concerns as to whether the prospective member fulfils the requirements set out in Article 91(2) to (6), it shall engage in an enhanced dialogue with the institution to address the identified concerns with a view to ensure that the prospective member is or becomes suitable when taking up his/her position. EBA shall issue Guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 to define how the enhanced dialogue to address suitability concerns shall be carried out.

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1d. ***Member States shall ensure that competent authorities assess that the members of the management body fulfil at all times the criteria and requirements set out in paragraphs (2) to (6). The application and other information necessary for assessing the suitability of members of the management body shall be provided to the competent authority through means determined by the competent authority***.

Competent ***authorities may request additional information or documentation, including interviews or hearings.***

1ef. ***The competent*** authorities shall in particular verify whether the criteria and requirements set out in ***paragraphs (2) to (6),*** 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 ***the entity.***

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1g. Where members of the management body do not fulfil the criteria and requirements set out in Article 91(2) to (6), at all times, Member States shall ensure that competent authorities have the necessary powers to:

(a) in case of ex ante assessments, prevent such members from being part of, or remove them from, the management body;

(b) in case of ex post assessment, remove such members from the management body; or

(c) require the entities concerned to take additional measures necessary to ensure that such members are or become suitable for the positions concerned.

As soon as any new facts or other circumstances that could affect the suitability of members of the management body are known, the entities referred to in paragraph 1 shall reassess the suitability of those members and shall inform without undue delay the relevant competent authorities thereof.

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In such cases, where the competent authority becomes aware that the relevant information concerning the suitability of the members of the management body has changed and such change could affect the suitability of the members concerned, the competent authority shall reassess their suitability.

Competent authorities shall not be required to reassess the suitability of the members of the management body when their mandate is renewed, unless relevant information that is known to competent authorities has changed and such change could affect the suitability of the member concerned.

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1ga. Competent authorities may request the competent authority for the supervision of anti-money laundering in line with Directive (EU) 2015/849, to consult, in the context of their verifications, and on a risk-sensitive basis, the relevant information concerning the members of the management body. Competent authorities may also request to have access to the Central AML/CFT database referred to in Article 11 of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]. The competent authority for the supervision of anti-money laundering in line with Directive (EU) 2015/849 shall decide on whether or not to grant such request.

1h. At least with respect to the appointment of members of the management body for a position in the entities referred to in paragraph 1ca, competent authorities shall duly consider setting a maximum period for concluding the suitability assessment, which may be extended where appropriate.

2. Each member of the management body shall commit sufficient time to perform his or her functions in the entities.

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2a. Each member of the management body shall be of good repute, act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the ~~management~~ ***body*** 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.

2b. The management body shall possess collective knowledge, skills and experience to be able to adequately understand the ***entity's*** activities, as well as the associated risks it is exposed to, ***and the impacts it creates*** in the short, medium and long term, taking into account ~~environmental~~, social and governance factors. The overall composition of the management body shall ***be sufficiently diversified to*** reflect an adequately broad range of experience.

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3. 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 ***entity'***s activities. Unless where members of the management body represent the interests of a Member State, members of the management body of an ***entity*** 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.

4. For the purposes of paragraph ***3***, the following shall count as a single directorship:

(a) executive or non-executive directorships held within the same group.

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(b) executive or non-executive directorships held within either of the following:

(i) ***entities*** 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 ***or entities where the same institutional protection scheme holds a qualifying holding; or***

(ii) undertakings, including non-financial entities, in which the entity holds a qualifying holding.

For the purposes of point (a), a group shall mean a group of undertakings that are related to each other as ***described*** in Article 22 of Directive 2013/34/EU ***or a group*** of ***undertakings that are in the same financial holding or mixed financial holding***.

5. Directorships in organisations, which do not pursue predominantly commercial objectives, shall not count for the purposes of paragraph ***3.***

6. Competent authorities may authorise members of the management body to hold one ***additional*** non-executive directorship.

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7. ***Entities*** shall devote adequate human and financial resources to the induction and training of members of the management body***, including on environmental, social and governance risks and impacts and on ICT related risks***.

8. 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 ***and*** to ***proportionally promote diversity and gender balance in*** the management body***. For*** that purpose***, entities shall*** put in place a policy promoting diversity in the management body.

9. 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.

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10. EBA shall issue guidelines on the following:

(a) t***he*** 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 ***entity***;

(b) the notions of good repute, honesty, integrity and independence of mind of a member of the management body as referred to in paragraph ***2a***;

(c) the notion of adequate collective knowledge, skills and experience of the management body as referred to in paragraph ***2b***;

(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 ***7***;

(e) the notion of diversity to be taken into account for the selection of members of the management body as referred to in paragraph ***8***;

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(f) the criteria to determine whether there are 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 an increased risk thereof, in connection with an entity

For the purpose of point (f), EBA shall closely cooperate with the European Union authority for anti-money laundering and countering the financing of terrorism, once established, and the European Securities and Markets Authority.

EBA shall issue ***the*** guidelines ***referred to in this Article*** by ***...*** [***24*** months from date of entry into force of this amending Directive].

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10a. For the purposes of this Article and Article 91a, the EBA shall develop draft regulatory technical standards further specifying the minimum content of the suitability questionnaire, curriculum vitae and internal suitability assessment to be submitted to the competent authorities for performing the suitability assessment referred to in paragraph 1d of this article and in paragraph 3a of Article 91a, for the entities listed in paragraph 1ca.

Member States shall ensure that for entities other than those referred to in paragraph 1ca of this Article, appropriate standards are developed.

EBA shall submit those draft regulatory technical standards to the Commission by ... [24 months after the date of entry into force of this amending Directive].

Power is conferred on the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Article 10 of Regulation (EU) No 1093/2010.

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10b. By 31 December 2029 , the EBA, in close cooperation with the ECB, shall review and report on the application of paragraphs 1ca to 1h and on their efficiency in ensuring that the fit and proper framework is fit for purpose taking into account the principle of proportionality and shall submit that report to the European Parliament and to the Council. On the basis of this report, the Commission shall submit a legislative proposal, if appropriate.

11. This Article and ***Article*** 91a[redacted] shall be without prejudice to provisions of the Member States on the representation of employees in the management body.

12. This Article and Article 91a shall be without prejudice to provisions of the Member States on the appointment of members of the management body in its supervisory function by regional or local elected bodies or the appointments where the management body does not have any competence in the process of selecting and appointing its members. In these cases, appropriate safeguards shall be put in place to ensure the suitability of these members of the management body.';

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(19a) The following ***Article*** 91a ***is*** inserted:

‘Article 91a

Key function holders and suitability assessment

1. The entities as referred to in Article 91(1) shall have the primary responsibility for ensuring that key function holders are at all times of sufficiently good repute, act with honesty and integrity and possess sufficient knowledge, skills and experience necessary to perform their duties. The absence of a criminal conviction or of ongoing prosecutions for a criminal offence shall not in itself be sufficient to fulfil the requirement to be of good repute and act with honesty and integrity.

1***a***. The entities ~~shall~~ ensure that ***key function holders*** fulfil ***at all time*** the criteria and requirements set out in ***paragraph 1 and*** shall assess the suitability of ***key function holders*** before ***they*** take ~~their~~ positions ***and periodically, taking into account supervisory expectations, as laid down in applicable laws, regulations, guidelines and internal suitability policies***.

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2. ***Where the entities conclude, based on the assessment referred to in paragraph 1a that the person does not*** fulfil the criteria and requirements set out in paragraph 1, ***they*** shall***:***

(a) ***not appoint a person as a key function holder in the case that the*** suitability assessment is completed ***before*** the ***person takes up*** the ***function; or***

(b) remove such ***a person*** from ***its position as key function holder, in a timely manner***; ***or***

(c) take ***additional*** measures necessary to ensure***, in a timely manner,*** that such ***persons are or become*** suitable for the position concerned.

The entities shall take all measures necessary to ensure the appropriate functioning of that position***, including replacing the key function holder if that person ceases to comply with the suitability criteria***.

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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.

The information shall be transferred to the competent authority through means determined by ***the*** competent ***authority.***

3a. Member States shall ensure that competent authorities assess ***that*** the heads of internal control functions and the chief financial officer ~~fulfil~~ ***at all times*** the~~criteria~~ ***and requirements*** set out in ***paragraph*** 1~~where those heads or~~ ***the*** officer ~~are~~ appointed for roles ***at least*** 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; ***except where it is affiliated to a central body;***

(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;

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(*da) large subsidiaries, as defined in Article 4(1), point (147) of Regulation 575/2013;*

(e) 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 within their group, except those falling under Article 21a(4).

The information referred to in paragraph 3 shall be provided to the competent authority through means determined by the competent authority .

Where the heads of internal control functions and the chief financial officer do not fulfil the requirements set out in paragraph 1 at all times, Member States shall ensure that competent authorities have the necessary powers to:

(a) in case of ex ante assessments, prevent such heads or officer from taking up the position or remove them from the position;

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(b) in case of ex post assessment, remove such heads or officer, or require the entity to remove them from the position;

(c) require the entities concerned to take additional appropriate measures to ensure that such heads or officer are or become suitable for the position concerned.

As soon as any new facts or other circumstances that could affect the suitability of the heads of internal control functions and the chief financial officer are known, the entities referred to in this paragraph shall reassess the suitability of those heads and officer, and shall inform without undue delay the relevant competent authorities thereof.

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In such cases, where the ***competent authority becomes aware that the relevant information concerning*** the suitability of the heads of internal control functions and ***the*** chief financial officer ***has changed and such change may affect the suitability of the heads or officer concerned, the competent authority shall reassess their suitability.***

Competent authorities shall not be required to reassess the suitability of such heads or officer when their contract is renewed or extended, unless relevant information that is known to competent authorities has changed and such change could affect the suitability of the heads or officer concerned.

At least with respect to the appointment of heads of internal control functions and the chief financial officer for positions in- the entities referred to in -paragraph ***3a,*** competent authorities ***shall duly consider setting a maximum period for concluding*** the- suitability assessment***, which may be extended where appropriate***.

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3b. ***Competent authorities may request the competent authority for the supervision of anti-money laundering in line with Directive (EU) 2015/849, to consult, in the context of their verifications, and on a risk-sensitive basis, the relevant information concerning the heads of internal control functions and the chief financial officer. Competent authorities may also request to have access to the Central AML/CFT database referred to in Article 11 of Regulation [please insert reference – proposal for establishment of an Anti-Money Laundering Authority - COM/2021/421 final]. The competent authority for the supervision of anti-money laundering in line with Directive (EU) 2015/849 shall decide on whether or not to grant such request.***

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4. EBA shall issue guidelines on the following:

(a) the notions of good repute, honesty, and integrity as referred to in paragraph 1;

(b) the notion of adequate knowledge, skills and experience as referred to ***in*** paragraph 1.

(c) the criteria to determine where there are 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 an increased risk thereof in connection with an entity.';

'For the ***purposes of*** the first subparagraph***, point (c),*** EBA shall ***work in close cooperation with the European Securities and Markets Authority and the Authority for Anti-Money Laundering and Countering*** the ***Financing*** of ***Terrorism, once established***.***'***

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EBA shall ***issue the guidelines referred to in this Article*** by ***...*** [***24*** months from date of entry into force of this amending Directive].

(***21***) 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 ***heads of*** 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;’;

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(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;’;

(*22*) Article 94 is amended as follows:

(*-a) in paragraph 1, point (a) is replaced by the following:*

(a) where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit concerned and of the overall results of the institution and when assessing individual performance, financial and non-financial criteria are taken into account, including the treatment of risks referred to in Article 76, paragraph 2;’;

(a) in paragraph 1, point (g)(ii), the fifth indent is replaced by the following:

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(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;’;

(23a) in Article 97(4), the second subparagraph is replaced by the following:

When conducting the review and evaluation referred to in paragraph 1 of this Article, competent authorities shall apply the principle of proportionality in accordance with the criteria disclosed pursuant to point (c) of Article 143(1). In particular, for the purpose of conducting the review and evaluation of an institution, the competent authority may consider whether all the following conditions are met:

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(a) the institution is not a G-SII, a non-EU G-SII, or a G-SII entity according to Regulation (EU) No 575/2013;

(b) the institution has not been identified as an O-SII in accordance with Article 131(1) and (3) of this Directive;

(c) the institution is part of a group where the parent institution and the vast majority of the subsidiary institutions are related within the meaning of Article 22, paragraph 7, of Directive 2013/34/EU;

(d) the subsidiary institutions, related as per point (c), meet all the following conditions:

(i) they qualify, or the vast majority of them qualify, as mutuals, cooperative societies or savings institutions in accordance with Article 27(1)(a) of Regulation (EU) No 575/2013 and the applicable national law includes a cap or restriction on the maximum level of distributions;

(ii) on individual or sub-consolidated basis the total assets do not exceed EUR 30 billion.'

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(23b) in Article 98(1), the following point is added:

'(ia) the extent to which the institutions have put in place appropriate policies and operational actions related to the targets and milestones defined in the plans referred to in Article 76(2).';

(23) in Article 98, the following ***paragraphs are*** 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.

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Institution's exposures to environmental, social and governance risks shall be assessed also on the basis of institutions' plans as defined in Article 76(2). Institutions' governance and risk management processes with regard to environmental, social and governance risks shall be brought into line with the objectives set out in those plans.

The review and evaluation performed by competent authorities shall include the assessment of the institutions' plans and targets, as referred to in Article 76(2), as well as of the progress made towards addressing the ESG risks arising from the process of adjustment towards climate neutrality by 2050, as set out in Regulation (EU) 2021/1119, and towards other relevant Union regulatory objectives in relation to environmental, social and governance factors.

10. The review and evaluation performed by competent authorities shall include the assessment of institutions' governance and risk management processes for exposures to crypto-assets and the provision of services related to crypto-assets including by considering institutions' policies and procedures for identifying risks, as well as the adequacy of the results of the assessment referred to in Article 79(1), point (e) and Article 83(4) .';

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(24) in Article 100 the following paragraphs 3 and 4 are added:

‘3. Institutions and ~~,~~ third parties acting in a consulting capacity to institutions ***in the context of stress testing exercises,*** 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 ***activities***.

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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. ***The Joint Committee shall publish those guidelines by ... [18 months from the date of entry into force of this amending Directive]***. 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.';

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(*25a)* ***in Article 101, paragraph 3 is replaced by the following:***

‘3. If for a trading desk using an internal market risk model, results of backtesting or P&L attribution test indicate that the model is no longer sufficiently accurate, the competent authorities shall review the conditions for the permission for using the internal model or impose appropriate measures to ensure that the model is improved promptly.’;

(25) 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)***,*** (5)***, (9)*** and (***10***), 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:’***;***

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(ii) ***point (e) is replaced by*** the following ***:***

'(e) restrict or limit the business, including with regard to the acceptance of deposits, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution;';

(ii) the following point is added:

'(m) require institutions to reduce the risks arising ***in the short, medium and long term, from ESG factors , including those arising from the process*** of ***adjustment*** and transition trends ***towards the relevant Member States, Union or third country legal and regulatory objectives,*** through adjustments to their business ***strategies*** , governance and risk management ***for which a reinforcement of the targets, measures, and actions included in their plans to be prepared in accordance with Article 76(2) could be requested***.';

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(iia) the following point is added:

'(n) require institutions to undertake stress testing or scenario analysis to assess risks resulting from crypto-asset exposures and from the provision of crypto-assets related services.

(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.';

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(*26*) 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:

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(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***;***

(c) as soon as the competent authority has completed the review in point (b), point (a) shall no longer apply.

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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.

6a. EBA shall, by...[9 month from entry into force of this amending Directive], issue guidelines to further specify how to operationalise the requirements set out in paragraph 6, and in particular:

(a) how competent authorities shall reflect in their supervisory review and evaluation process the fact that an institution has become bound by the output floor;

(b) how competent authorities and institutions shall communicate and disclose the impact on supervisory requirements of an institution becoming bound by the output floor.

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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.';

(27a) in Article 104b, the following paragraph is inserted:

'4a. Where an institution becomes bound by the output floor, its competent authority may review its guidance on additional funds communicated to the respective institution to make sure that its calibration remains appropriate.';

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(27) in Article 106, paragraph 1 is replaced by the following:

‘1. Member States shall empower the competent authorities

(a) to require institutions to publish information referred to in Part Eight of Regulation (EU) No 575/2013 more ***frequently*** than ***prescribed in Articles 433, 433a, 433b*** and ***433c;***

(aa) to set deadlines for ***institutions, other than small and non-complex institutions, to submit*** disclosure information to EBA for its publication on a centralised EBA website;

(b) ***to require institutions*** to use specific media and locations for publications***,*** other than the EBA website for centralised disclosures***,*** or the financial statements of institutions.***;***

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EBA shall, taking into consideration the provisions included in Part Eight of Regulation (EU) No 575/2013, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010, to specify the requirements set out in paragraph 1 of this Article. The EBA shall issue those guidelines by ... [12 months from the date of entry into force of this amending Directive].';

(***28***) Article 121 is replaced by the following:

'1. Member States shall require that the members of the management body of a financial holding company or mixed financial holding, ***that are not approved in accordance with Article 21a(1),*** 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. ***The financial holding companies or mixed financial holding companies shall have the primary responsibility for ensuring the suitability of the members of their management body***.

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(*29*) 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[*], where at least one investment firm in that group is subject to Regulation (EU) No 575/2013 pursuant to Article 1(2) ***or 1(5)*** 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***) or 1(5***) 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).’;

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(~~[illegible]~~ *30*) Article 131 is amended as follows:

~~[illegible]~~

(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 6, the following point is added:***

(c) where an O-SII becomes bound by the output floor, its competent or designated authority, as applicable, shall review, by no later than the date of the annual review mandated under point (b), the institution's O-SII buffer requirement to make sure that its calibration remains appropriate.';

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(d) in paragraph 15, the ***second*** 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.’;

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(*31*) 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***, including macroprudential or systemic risks stemming from climate change,*** 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.’;

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(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.’;

(ca) in paragraph 8, the following point is added:

‘(d) where a systemic risk buffer ***applies to total risk exposure amount of an institution and this institution becomes bound by*** the ***output floor, its*** competent or designated authority, as applicable, ***shall review, by no later than the date of the biennial review mandated under point (b), the institution’s systemic risk buffer requirement to ensure the calibration remains appropriate***.’;

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(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.

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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.

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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.

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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.

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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.';

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(*32*) 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.’;

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(*33*) in Article 161, paragraph 3 is deleted.

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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].

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However, the provisions necessary to comply with the amendments set out in Article 1, ***first paragraph, point (6), on the requirement to establish a branch for the provision of banking services by third country undertakings, and those set out in*** 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 and the provision on preserving clients' acquired rights under existing contracts referred to in Article 21c, paragraph 5 from *[OP please insert the date = 6 months from the date of application of this amending Directive]*.

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.

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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 1, (1), points (30) (d) and (31) (e) shall apply from [PO, please insert date 20 days after the entry into force of this Directive].

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*

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REGULATION (EU) …/…
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of …

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[18],

Acting in accordance with the ordinary legislative procedure,

[18] OJ C ….

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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 ***Union*** 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 ***Union*** banking sector entered the COVID-19 crisis on a resilient footing. However, while the overall level of capital in ▌institutions ***in the Union*** 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.

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Moreover, with the final implementation of the Basel standards, the EU is completing a decade long process of reform. In this context the EU should carry out an overall assessment of the situation of its banking system, taking into account all the relevant dimensions.

The Commission should be mandated to perform a holistic review of the framework for prudential and supervisory requirements. This review should take into consideration the various types of corporate forms, structures and business models across the Union. The review should also take into account the implementation of the output floor as part of the prudential rules on capital and liquidity, as well its level of application. The review should assess whether these ensure an adequate level of depositor protection and safeguard for financial stability in the Union, taking into account both the Union-wide and the Banking Union developments in all its dimensions. In this regard, the Commission shall duly consider the corresponding statements and conclusions on the Banking Union of both, the European Parliament and the European Council.

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(3) On 27 June 2023, the Commission committed to carry out a holistic, fair and balanced assessment of the state of the the banking system and applicable regulatory and supervisory frameworks in the Single Market. In doing so, it will take into account the impact of the latest changes introduced by the present Regulation, as well as of the state of the Banking Union in all its dimensions. Among the issues to be analysed, the Commission will examine the implementation of the output floor, including its level of application. It will carry out this mandate based on inputs from the European Banking Authority and from the European Central Bank/Single Supervisory Mechanism, and will consult with interested parties to ensure that the various perspectives are appropriately considered. The Commission will, where appropriate, present a legislative proposal based on the report.

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(4) 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***, approved by competent authorities,*** 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 ***BCBS*** 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.

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(5) 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. ***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***, the output floor limits the risk of excessive reductions in capital***. 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.

(6) ***In order to ensure that own funds are appropriately distributed and available to protect savings where needed, the output floor requirements should apply at all levels of consolidation, unless a Member State considers that this objective can be effectively achieved otherwise, in particular as regards groups such as cooperative groups with a central body and affiliates in that Member State. In such cases, a Member State should be able to not to apply the output floor requirement on an individual or sub-consolidated basis to institutions in that Member State, provided that, at the highest level of consolidation in that Member State, the parent institution of those institutions in that Member State complies with the output floor on the basis of its consolidated situation.***

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(7) The ***BCBS*** 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.

(8) 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 ***borrowing institution*** is established, as – implicit government support for ***such*** institutions ***should no longer be*** assumed.

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(9) For subordinated ***and prudentially assimilated debt exposures as well as for*** 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 ***non-trading*** book and the trading book. ***Institutions in the*** Union ▌ 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 ***certain*** insurance undertakings under ***control or*** significant influence of the institution should be grandfathered to avoid disruptive effects and to preserve the role of ▌ institutions ***in the Union*** as long-standing, strategic equity investors. ***However, given*** the prudential safeguards and supervisory oversight to foster ▌ integration of the financial sector ▌, 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 ***unlisted Union*** corporates, ▌, investments ***undertaken directly or indirectly for instance through venture capital firms*** should not be considered as speculative where they are made with the firm intention of the institution's senior management to hold ***them*** for three or more years.

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(10) To promote certain sectors of the economy, the Basel III standards provide for ***discretion of competent authorities in carrying out their*** supervisory ***tasks*** to enable institutions to assign, within certain limits, a preferential treatment to equity holdings ***acquired*** 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.

(11) Corporate lending in the Union is predominantly provided by institutions which use the ***Internal Ratings Based*** (IRB) ***Approach*** 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 ***provided*** by ***nominated*** 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.

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(12) Most ***Union*** corporates, however, do not seek external credit ratings-[redacted]. 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 [redacted]. During that transitional period, institutions using ***the*** IRB ***Approach*** should be able to apply a favourable treatment when calculating their output floor for investment grade exposures to unrated corporates, whilst initiatives to foster ***a*** widespread use of credit ratings should be established. ***Any extension of the transitonal period should be substantiated and limited to four years at the most.***

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(13) After the ***transitional*** period, institutions should be able to refer to credit assessments by ECAIs to calculate the capital requirements for ***a significant part*** of their corporate exposures. ***EBA, European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA) and European Supervisory Authority (European Securities and Markets Authority) (ESMA), (know colletively as*** ***'***European Supervisory Authorities***' or '***ESAs***'***) should ***monitor the use of the transitional arrangement and should consider relevant developments and trends in the ECAI market,*** the impediments to the availability of ~~credit~~ ***assessments*** by ECAIs, in particular for corporates, and ***the*** possible measures to address ***these*** impediments. ***The transitional period should be used to significantly expand the availability of ratings for Union corporates. To this end, rating solutions beyond the currently existing rating ecosystem should be developed to incentivise especially larger corporates to become externally rated.*** In ***addition to*** the ***positive externalities generated by the rating process, a wider rating coverage will foster, inter alia, the Capital Markets Union. In order to achieve this goal it is necessary to consider the requirements related to external credit assessments, or the establishment of additional institutions providing such assessments, which might entail substantial implementation efforts. Member States, in close cooperation with their central banks, should assess whether a request for the recognition of their central bank as ECAI in accordance with Article 2 of Regulation (EC) No 1060/2009 of the European Parliament and the Council[19] and the provision of corporate ratings by the central bank for the purposes of Regulation (EU) No 575/2023 might be desirable in order to increase the coverage*** of ***external*** ratings~~.~~***.***

[19] ***Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1).***

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(14) For both ***exposures secured by*** residential ***property*** and ***exposures secured by*** commercial ***immovable property***, more risk-sensitive approaches have been developed by the ***BCBS*** to better reflect different funding models and stages in the construction process.

(15) The financial crisis of 2008-2009 revealed a number of shortcomings of the current standardised treatment of ***exposures secured by residential property and*** exposures ***secured by commercial immovable property***. Those shortcomings have been addressed in the Basel III standards. In fact, the Basel III standards ***differentiate between exposures where the repayment is materially dependent on cash flows generated by the property and exposures where this is not the case. The former exposures are*** 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 ***income producing real estate*** under the ***IRB*** Approach ▌– referred to in Part III, Title II, Chapter 3 of Regulation (EU) No 575/2013.

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(16) For ***exposures secured by*** residential ***property*** and ***exposures secured by*** commercial ***immovable property***, the loan -splitting approach ▌– should be kept, as that approach is sensitive to the type of borrower and reflects the risk mitigating effects of the ***immovable property*** collateral in the applicable risk weights, even in case of ***exposures featuring*** high 'loan-to-value' (LTV) ratios.–▌

The loan-splitting approach, however, should be adjusted in accordance with the Basel III standards as it has been found to be too conservative for ***certain*** mortgages with very low LTV ratios.

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(17) To ensure that the impacts of the output floor on low-risk residential mortgage lending by institutions using ***the*** IRB ***Approach*** 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 ***transitional period***, when calculating the output floor, ***institutions using the IRB Approach*** should be able to apply a lower risk weight to the part of their exposures secured by ***a mortgage on*** 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 ***immovable property*** markets may differ from one Member ***State*** to another, the decision on whether to ***apply*** the transitional arrangement should be left to individual Member States. The use of the transitional arrangement should be monitored by EBA. ***Any extension of the transitonal period should be substantiated and limited to four years at the most.***

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(18) 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 land acquisition for development and construction purposes, or development and construction of any residential or commercial immovable property.

(19) 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. ***In the case of a revaluation beyond the value at the time of the loan was granted provided there is sufficient data, the*** property's value recognised for prudential purposes should therefore not exceed the average value of a comparable property measured over a sufficiently long 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 ***performance or the resilience, protection and adaptation to physical risks*** of buildings and housing units ***could*** be considered as value increasing.

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(20) 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***, while*** the primary source of repayment of the obligation is the income generated by the assets being financed. To reflect the associated risk more accurately, ***this form of lending*** should therefore be subject to specific capital requirements for credit risk. In line with the Basel III standards on assigning risk weights to specialised lending exposures, a dedicated specialised ***lending exposure*** class should be introduced under the SA-CR, thereby improving consistency with the already existing specific treatment of specialised lending ***exposures*** under the IRB ***Approach***. 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 ***lending*** exposures class.

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(21) While the new standardised treatment for unrated specialised lending exposures laid down in ***the*** Basel III standards is more granular than the current standardised treatment of exposures to corporates ~~–~~, 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 ***the*** 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 ***of*** 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 ***on a transitional basis. That transitional arrangement should be assessed by a report prepared by EBA***.

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(22) The classification of retail exposures under the SA-CR and the IRB ***Approach*** 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.

(23) 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 ***lower*** 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.

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(24) ***Institutions should have a key role in contributing to the recovery also by extending proactive debt restructuring measures towards worthy debtors facing or about to face difficulties in meeting their financial commitments. In this regard, institutions should not be discouraged to extend meaningful concessions to the obligors when deemed appropriate by a potential and unwarranted classification of counterparties as defaulted where such concessions might restore their likeliness to pay the remainder of their debt obligations. When developing guidelines on the definition of default of an obligor or credit facility, the EBA should duly consider the need for providing adequate flexibility to institutions***.

(25) The financial crisis of 2008-2009 has revealed that, in some cases, ▌institutions have also used ***the*** IRB ***Approach*** on portfolios unsuitable for modelling due to insufficient data, which had detrimental consequences for the robustness of the results ▌. It is therefore appropriate not to oblige institutions to use the IRB ***Approach*** 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 ***the*** IRB ***Approach*** for exposure classes where robust modelling is more difficult ***in order*** to increase the comparability and robustness of capital requirements for credit risk under the IRB ***Approach***.

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(26) 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 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 institutions in the level of estimated risk. Institutions should therefore use regulatory LGD values rather than internal LGD estimates for those low-default portfolios.

(27) Institutions that use internal models to estimate the own funds requirements for credit risk for equity exposures typically base their risk assessment on ***publicly*** 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 ***non-trading*** 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.

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(28) 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 ***minimum values for*** risk parameters ~~(~~'input floors'***)*** should constitute a safeguard to ensure that capital requirements do not fall below prudent levels. In addition, ***such input floors*** 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.

(29) ***Input*** floors that are calibrated too conservatively may indeed discourage institutions from adopting the IRB ***Approach*** 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 ***input*** floors. To avoid such unintended consequences, ***input*** 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.

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(30) 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. ***Any extension of the transitonal period should be substantiated and limited to four years at the most.***

(31) 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.

(32) To ensure a consistent approach for all RGLA-PSE exposures, a new RGLA-***PSE*** exposure class should be created, independent from both sovereign and institutions exposure classes***. The treatment of assimilated RGLA-PSE exposures***, ~~–~~which ***under the Standardised Approach for credit risk would qualify for a treatment as exposures to the central government according to Articles 115 and 116 should not be assigned to the new RGLA-PSE exposure class under the IRB Approach and should not*** be subject to ~~–~~input floors***. Moreover, specific lower input floors under the IRB Approach should be calibrated for RGLA-PSE exposures, which are not assimilated, in order to appropriately reflect their risk profile compared to exposures to corporates***.

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(33) It should be clarified how the effect of a guarantee ***should*** be recognised for a guaranteed exposure ▌treated under the IRB ***Approach using own estimates of loss given default (LGD)*** where the guarantor belongs to a type of exposures ***treated under*** the IRB ***Approach but without using own estimates of LGD***. In particular, the use of the substitution approach, whereby the risk parameters ***related to*** the underlying ***exposure*** 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, ***and*** 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 ***generally*** lead to assigning the SA-CR risk weight of the guarantor to the guaranteed exposure.

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(34) ***The final Basel III framework no longer requires an institution that adopted the IRB approach for one exposure class to adopt that approach for all its non-trading book exposures. To ensure a level playing field between institutions currently treating some exposures under the IRB Approach and those that are not, a transitional arrangement should allow institutions to revert to less sophisticated approaches under a simplified procedure. This procedure should allow competent authorities to oppose requests to revert to a less sophisticated approach that are made with a view to engage in regulatory arbitrage. For this procedure, the sole fact that the reversal to a less sophisticated approach results in a reduction of own funds requirements determined for the respective exposures should not be considered to constitute a sufficient ground for regulatory arbitrage.***

(35) ***In the context of removing unwarranted variability in capital requirements, existing discounting rules applied to artificial cash flows should be revised in order to remove any unintended consequences. EBA should be mandated to revise its guidelines on the return to non-default-status by 31 December 2025.***

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(36) The introduction of the output floor could have a significant impact on own funds requirements for securitisation positions held by institutions using the Securitisation Internal Ratings Based Approach (SEC-IRBA). Although such positions are generally small relative to other exposures, the introduction of the output floor could affect the economic viability of the securitisation operation because of an insufficient prudential benefit of the transfer of risk. This would come at a juncture where the development of the securitisation market is part of the action plan on capital markets union and also where originating institutions might need to use securitisation more extensively in order to manage more actively their portfolios if they become bound by the output floor. During a transitional period, institutions using the IRB Approach should be able to apply a favourable treatment to their securitisation positions when calculating their output floor. EBA should report to the Commission on the need to eventually review the prudential treatment of securitisation transactions, with a view to increase the risk-sensitivity of the prudential treatment.

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(37) Regulation (EU) 2019/876 of the European Parliament and of the Council[20] 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 legislative ***proposal, following*** the assessment of their impacts for ***institutions in the Union.***

(38) ***The final FRTB standards in relation to the boundary between the trading and non-trading book should be implemented in Union law, as they have significant bearing on the calculation of the own funds requirements for market risk. In line with the Basel standards, the implementation of the boundary requirements should include the lists of instruments to be assigned to the trading book or non-trading book, as well as the derogation to allow institutions to assign, subject to the approval of the competent authority, certain instruments usually held in the trading book, including listed equities, to the non-trading book, where positions in those instruments are not held with trading intent or do not hedge positions held with trading intent.***

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20 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).

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(39) In order to avoid a significant operational burden for institutions in the Union, all of the requirements implementing the FRTB standards for the purpose of calculating the own funds requirements for market risk should have the same date of application. Therefore, the date of application of a limited number of FRTB requirements that were already introduced by Regulation (EU) 2019/876 should be aligned with the date of application of this Regulation.

(40) 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 ***institutions in the*** Union ▌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 ***implementation*** of the final FRTB standards in Union law. ***On 24 February 2023 EBA issued an opinion that if provisions referred to in Article 3(6) of Regulation (EU) 2019/876 entered into force and the applicable legal framework did not yet provide for the application of the FRTB-inspired approaches for capital calculation purposes, competent authorities referred to in Article 4(2), points (i) and (viii), of Regulation (EU) No 1093/2010 should not prioritise any supervisory or enforcement action in relation to those requirements referred to in Article 3(6) of Regulation (EU) 2019/876, until achieving the full implementation of the FRTB which should be from 1 January 2025.***

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(41) In light of the updated design of the EU carbon emissions allowance market, its stability in recent years and the limited volatility of the prices for carbon certificates, a specific risk weight for exposures to EU ETS carbon trading should be introduced under the alternative standardised approach.

(42) Under the alternative standardised approach, exposures to instruments bearing residual risks are subject to a residual risk add-on ('RRAO') charge to take into account risks that are not covered by the sensitivities-based method. Under the Basel standards, an instrument and its hedge can be netted for the purposes of this charge only if they perfectly offset. However, institutions are able to hedge in the market, to a large extent, the residual risk of some of the instruments in scope of the RRAO charge thus reducing the overall risk of their portfolios, even though those hedges might not perfectly offset the risk of the initial position. To allow institutions to continue hedging without undue disincentives and in recognition of the economic rationale of reducing the overall risk, the implementation of the RRAO charge should allow, under strict conditions and supervisory approval, for the hedges of those instruments that can be hedged in the market to be excluded from the RRAO charge.

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(43) 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 ***book business*** 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 ***book business*** 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.

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(44) 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 ***by means of a delegated act. The measures introduced in this manner should remain temporary.***

Where it is appropriate for those measures to apply on a permanent basis, the Commission should submit a legislative proposal.

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(45) 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.

(46) 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 ***discretion*** 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, ***that discretion*** should be exercised in a harmonised manner for the minimum own funds requirements by disregarding historical operational loss data for all institutions.

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(47) ***When measuring capital requirements for operational risk, insurance policies might be allowed in the future to be used as effective risk mitigation techniques. To that end, and within 42 months after the entry into force of this Regulation, EBA should report to the Commission on whether it is appropriate to recognise insurance policies as an effective risk mitigation technique, and the conditions, criterias and standard formula to be used in such cases.***

(48) ***The*** ***extraordinary and unprecedented pace of monetary policy tightening in the aftermath of the COVID-19 pandemic might give rise to significant levels of volatility in the financial markets. Together with increased uncertainty leading to increased yields for public debt, in turn, this might give rise to unrealised losses on certain institutions' holdings of public debt. In order to mitigate the considerable negative impact of the volatility in central government debt markets on institutions' regulatory capital and therefore on institutions' capacity to lend, a temporary prudential filter that would partially neutralise that impact should be re-introduced.***

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(49) ***Public*** ***financing through the issuance of government bonds denominated in the domestic currency of another Member State might continue being necessary to support public measures to fight the consequences of the severe, double economic shock caused by the COVID-19 pandemic and Russia's war of aggression against Ukrain. To avoid constraints on institutions investing in such bonds, it is appropriate to reintroduce the transitional arrangement for exposures to central governments or central banks where those exposures are denominated in the domestic currency of another Member State for the purposes of the treatment of such exposures under the credit risk framework.***

(50) ***Regulation (EU) 2019/630 of the European Parliament and of the Council introduced in Regulation (EU) No 575/2013 a requirement for minimum loss coverage for non-performing exposures (NPEs), the so-called prudential backstop. The measure aimed at avoiding a re-build of non-performing exposures held by institutions, while, at the same time, promoting pro- active management of NPEs by improving the efficiency of institutions' restructuring or enforcement proceedings. Against this background, some targeted changes should be applied to NPEs guaranteed by Export Credit Agencies or public guarantors. Furthermore, certain institutions that meet stringent conditions and are specialised in the acquisition of NPEs should be excluded from the application of the prudential backstop.***

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(51) 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 ***listed*** small and non-complex institutions and by other institutions. This disclosure obligation does not create an additional burden on these 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), which invited EBA to enhance disclosure requirements on asset quality and non-performing loans for all institutions. This is also fully consistent with the Communication on tackling non-performing loans in the aftermath of the COVID-19 pandemic.

(52) 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***. In addition, that centralised web-based platform should be interoperable with the European Single Access Point***.

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(53) 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 to access prudential information ***for market participants***. Such increased transparency should facilitate comparability of data across institutions and promote market discipline.

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(54) ***Achieving the environmental and climate ambitions of the European Green Deal and contributing to the UN's 2030 Agenda for Sustainable Development requires the channelling of large amounts of investments from the private sector towards sustainable investments in the Union. The provisions of Regulation (EU) No 575/2013 on the capital requirements for credit institutions should reflect the importance of the environmental, social and governance (ESG) factors and a full understanding of risks of the exposures to activities that are linked to overall sustainability or ESG objectives.***

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. ***ESG factors refer to environmental, social or governance factors that may have a positive or negative impact on the financial performance or solvency of an entity, sovereign or individual. Common examples of ESG factors include, among others, greenhouse gas emissions, biodiversity and water use and consumption in the area of environment; human rights, and labour and workforce considerations in the area of social; and rights and responsibilities of senior staff members and remuneration in the area of governance.***

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Assets or activities subject to impacts from environmental and/or social factors should be defined by reference to the ambition of the Union to become climate-neutral by 2050 as set out in the EU Climate Law, the EU Nature Restoration Law, and the relevant sustainability goals of the Union. The technical screening criteria for 'do no significant harm' adopted in accordance with Article 17 of Regulation (EU) 2020/852 of the European Parliament and of the Council, as well as specific Union legislation to avert climate change, environmental degradation and biodiversity loss should be used to identify assets or exposures for the purpose of assessing dedicated prudential treatments and risk differentials.

(55) The exposure to ESG risks is not necessarily proportional to an institution's size and complexity. ***The levels*** of exposures ***to ESG risks*** across the Union are also quite heterogeneous, with some ***Member States*** showing potential mild transitional impacts and others showing potential high transitional impacts on exposures related to activities that have a significant negative impact ***namely*** on the environment. The transparency requirements that institutions are subject ***to*** and the ***public*** sustainability ***disclosure*** requirements laid down in other ▌existing ▌Union ***legal acts*** will provide more granular data in a few years.

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However, to properly assess the ESG risks that institutions may face, it is imperative that markets and ***competent authorities*** obtain adequate data from all entities exposed to those risks***. Institutions should be in a position to systematically identify and ensure adequate transparency on their exposures to activities that are deemed to do significant harm to one of the environmental objectives within the meaning of Article 17 of Regulation (EU) 2020/852***. 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. ***To guarantee a comprehensive transparency to the markets, disclosures of ESG risks should also be extended to all institutions.*** The ~~l~~granularity of that information should be consistent with the principle of proportionality, having regard to the size and complexity of the ***institution and the materiality of its exposures to ESG risks. When revising the implementing technical standards as regards the disclosure of ESG risks, the EBA should assess means to enhance the disclosures on ESG risks of cover pools of covered bonds and consider whether information on the relevant exposures of the pools of loans underlying covered bonds issued by institutions, whether directly or through the transfer of loans to a special purpose vehicle (SPV), should either be included in the revised implementing technical standards or in the regulatory and disclosure framework for covered bonds***.

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(56) 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. ***An appropriate assessment of the availability and accessibility of reliable and consistent ESG data should be the basis to establish the full link between ESG risk drivers and traditional categories of financial risks and sets of exposures. ESMA should also contribute to this evidence gathering by reporting on whether ESG risks are appropriately reflected in credit risk ratings of the counterparties or exposures that institutions may have. In a context of rapid and continuous developments around identification and quantification of ESG risks by both institutions and supervisors, it*** is ***also*** necessary to bring forward ***to the date of entry into force of this Regulation part of the*** 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. ***The existing EBA mandate should be broken down into a series of reports due to the length and complexity of the assement work to be conducted. Therefore, two successive and annual follow-up EBA reports should be prepared by the end of 2024 and 2025, respectively. According to the International Energy Agency, to reach the carbon neutrality objective by 2050, no new fossil fuel exploration and expansion can take place. This means that fossil fuel exposures are prone to represent a higher risk both at micro level, as the value of such assets is set to decrease over time, and at macro level, as financing fossil fuel activities jeopardises the objective of maintaining the global rise of temperature below 1,5°C and therefore threatens financial stability. Competent authorities and market participants should, therefore, benefit from increased transparency by institutions on their exposures towards fossil fuel sector entities, including as well their activity towards renewable energy sources.***

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(57) To ensure that any adjustments for exposures for infrastructure do not undermine the climate ambitions of the Union, new exposures would get the risk weight discount only where the assets being financed contribute positively to one or more of the environmental objectives set out in Article 9 of Regulation (EU) 2020/852 and do not significantly harm the other objectives set out in that Article, or that the assets being financed do not significantly harm any of the environmental objectives set out in that Article.

(58) It is essential for supervisors to have the necessary ***powers*** 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 ***powers*** 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.

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(59) Crypto-asset markets have grown rapidly in recent years. To address potential risks for institutions caused by their exposures to crypto-assets that are not sufficiently covered by the existing prudential framework, the Basel Committee on Banking Supervision published in December 2022 a comprehensive standard for the prudential treatment of these exposures. The recommended date of application of the standard is 1 January 2025, but some technical elements of the standards are being further developed at Basel Committee level during 2023 and 2024. In light of the ongoing developments in crypto-asset markets and acknowledging the importance of fully implementing the Basel standards on banks' exposures to crypto-assets in Union law, the Commission should, submit a legislative proposal by 30 June 2025 to implement that standard, and should specify the prudential treatment applicable to those exposures in the transitional period until the implementation of the Basel standards. The transitional prudential treatment should take into account the legal framework introduced by Regulation (EU) 2023/1114 for issuers of crypto-assets and specify a prudential capital treatment of those crypto-assets. Therefore, during the transitional period, tokenised traditional assets, including e-money tokens, should be recognised as entailing similar risks to traditional assets and - crypto assets compliant with that Regulation and referencing traditional assets other than a single fiat currency should benefit from a capital treatment consistent with the requirements of that Regulation. Exposures to other crypto-assets, including tokenised derivatives on crypto-assets different from the ones that qualify for the more favourable capital treatment, should be assigned a 1 250 % risk weight.

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(60) The lack of clarity of certain aspects of the minimum haircut floors framework for securities financing transactions ▌, 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 ***securities financing transactions*** 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 ***securities financing transactions*** in Union law ▌. 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.

(61) Under the final Basel III reforms, the very short-term nature of securities financing transactions might not be well reflected in the Standardised Approach for credit risk, leading to own funds requirements calculated under this approach that could be excessively higher than own funds requirements calculated under the IRB Approach. As a result, and also given the introduction of the output floor, the own funds requirements calculated for those exposures could significantly increase, affecting the liquidity of debt and securities markets, including the sovereign debt markets. The EBA should therefore report on the appropriateness and the impact of the credit risk standards for securities financing transactions, and specifically whether an adjustment of the Standardised Approach for credit risk for those exposures would be warranted to reflect their short-term nature.

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(62) The Commission should ***implement*** into Union law the revised ***Basel III*** 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.

(63) When implementing the initial Basel III reforms in Union law ▌, certain transactions were exempted from the calculation of capital requirements for CVA risk. These exemptions were agreed to prevent a ***potentially*** excessive increase in the cost of some derivative transactions triggered by the introduction of the capital requirement for CVA risk, particularly when ***institutions*** could not mitigate the CVA risk of certain clients that ***are*** not able to exchange collateral. According to estimated impacts calculated by EBA, the capital requirements for CVA risk under the revised Basel ***III*** standards would remain unduly high for the exempted transactions with these clients. To ensure that ***these*** clients continue hedging their financial risks via derivative transactions, the exemptions should be maintained when implementing the revised Basel ***III*** standards.

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(64) However, the actual CVA risk of the exempted transactions may be a source of significant risk for ***institutions*** applying those exemptions; if those risks materialise, the ***institutions*** 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 ***Union***.

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

HAVE ADOPTED THIS REGULATION:

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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) in point(1), point(b) is replaced by the following:

'(b) to carry out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU of the European Parliament and of the Council, where one of the following applies, but the undertaking is not a commodity and emission allowance dealer, a collective investment undertaking, an insurance undertaking, or an investment firm for which the authorisation as a credit institution is waived in accordance with Article 8a of Directive 2013/36/EU:

(i) the total value of the consolidated assets of the undertaking established in the Union, including any of its branches and subsidiaries established in a third country, is equal to or exceeds EUR 30 billion;

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(ii) the total value of the assets of the undertaking established in the Union, including any of its branches and subsidiaries established in a third country, is less than EUR 30 billion, and the undertaking is part of a group in which the total value of the consolidated assets of all undertakings in that group that are established in the Union, including any of their branches and subsidiaries established in a third country, that individually have total assets of less than EUR 30 billion and that carry out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU is equal to or exceeds EUR 30 billion;

(iii) the total value of the assets of the undertaking established in the Union, including any of its branches and subsidiaries established in a third country, is less than EUR 30 billion, and the undertaking is part of a group in which the total value of the consolidated assets of all undertakings in the group that carry out any of the activities referred to in points (3) and (6) of Section A of Annex I to Directive 2014/65/EU, is equal to or exceeds EUR 30 billion, where the consolidating supervisor, in consultation with the supervisory college, so decides in order to address potential risks of circumvention or potential risks for the financial stability of the Union.

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For the purpose of points (b)(ii) and b(iii), where the undertaking is part of a third-country group, the total assets of each branch of the third-country group authorised in the Union shall be included in the combined total value of the assets of all undertakings in the group.

For the purpose of point (b)(iii), the consolidating supervisor may request all relevant information to the undertaking in order to take its decision.';

(b) point (12) is deleted;

(c) 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***. Subsidiaries of subsidiaries shall also be considered to be subsidiaries of the undertaking that is their original parent undertaking***;';

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(d) 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, ***consists of*** any of the following:

(a) a direct extension of banking;

(b) operational leasing, – the ownership or management of property, the provision of data processing services or any other activity ***insofar as those activities are*** ancillary to banking;

(c) any other activity considered similar by EBA to those mentioned in points (a) and (b);’;

(e) 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;

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(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 ***indicators*** considered relevant by the competent authority;

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The competent authority may make the decision that an entity does not qualify as a financial holding company even if one of the indicators referred to under points (i), (ii), (iii) and (iv) of the first subparagraph is met, where the competent authority considers that the relevant indicator does not convey a fair and true view of the main activities and risks of the group. Before making such decision, the competent authority shall consult the EBA providing a substantiated and detailed qualitative and quantitative justification. The competent authority shall have due regard to EBA's opinion and, where it decides to deviate from it, shall within three months from the date of receipt of EBA's opinion, provide to the EBA the rationale for deviating from the relevant opinion.';

(f) 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 ~~]~~;

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(g) 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 ***SSPE, or an*** insurance holding company or a mixed- activity insurance holding company as defined in Article 212(1), ***point*** (f) and (g), ***respectively,*** of Directive 2009/138/EC***, except where a mixed-activity insurance holding company has a subsidiary institution***;

(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 ***in*** Annex I, points 2 to 12 and ***points*** 15***, 16 and 17***, to Directive 2013/36/EU, or to pursue one or more of the services or activities listed in Annex I, Section ***A*** or B, to Directive 2014/65/EU – in relation to financial instruments listed in Section C of that Annex to that Directive;

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(ii) the undertaking is an investment firm, a mixed financial holding company, an investment holding company, a payment services provider ***listed under Article 1(1), points (a) to (d)*** of Directive (EU) 2015/2366 of the European Parliament and of the Council*, an asset management company or an ancillary services undertaking;

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* ***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).';***

(h) 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;

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(b) – the undertaking ***is not*** referred to in point (27)***(a) or (d) to (l) and is not an investment firm, an asset management company or a payment services provider listed under Article 1(1)***, points (a) ~~to~~ (d) ~~of Directive (EU) 2015/2366,~~

–

(c) the undertaking does not hold any participations in a financial sector entity;';

(i) in point (27), point (c) is deleted;

(j) 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 ~~or~~ ***or*** financial institution ~~–~~, 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;';

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(k) ***point (35) is replaced by*** the following:

‘***(35) “participation” means a participating interest as defined in Article 2, point (2) of Directive 2013/34/EU of the European Parliament and the Council, or the ownership, direct or indirect, of 20 % or more of the voting rights or capital of an undertaking***;’;

(l) point (37) is replaced by ***the following:***

‘(37) “***control” means the relationship between a parent undertaking and a subsidiary, as described in*** Article 22 of Directive 2013/34/EU***, or in the accounting standards to which an institution is subject under Regulation (EC) No 1606/2002 of the European Parliament and of the Council, or a similar relationship between any natural or legal person and an undertaking***;’;

(m) 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***, but not limited to,*** legal risk, model risk and ICT risk, but ***excluding*** strategic and reputational risk;’;

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(n) the following points (52a) to (52i) are inserted:

‘(52a) “legal risk” means ***the risk of*** losses, including***, but not limited to,*** expenses, fines, penalties or punitive damages, ***which an institution may incur as a consequence of*** 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 ***or the provision of inadequate or misleading information on the financial risk of products sold by the institution***;

(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.

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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 ***risk of*** loss ***resulting from*** decisions that ***are*** principally based on the output of internal models, due to errors in the ***design,*** development, ***parameter estimation,*** implementation***, use*** or ***monitoring*** 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;

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(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 ***or*** ineffective monitoring ***or validation*** of model performance ***or predictive ability*** to assess whether the selected internal model remains fit for purpose;

(52c) "ICT risk" means the risk of losses ▌related to ***any reasonable identifiable circumstances in relation to*** the use of network ***and*** information systems ***which, if materialised, may compromise the security of the network and information systems, of any technology dependent tool or process***, ▌of ***operations and processes,*** or ▌of ***the provision of services by producing adverse effects in the digital or physical environment***;

(52d) "environmental, social ***and*** governance ***risk" or "***ESG ▌risk" means the risk of ▌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; ***ESG risks materialise through the traditional categories of financial risks***

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(52e) “environmental risk” means the risk of 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 objectives ***set out in Article 9 of Regulation (EU) 2020/852.***

Environmental risk includes both physical risk and transition risk.

(52f) “physical risk”, as part of the environmental risk, means the risk of 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 environmental risk, means the risk of any negative financial impact on the institution stemming from the current or prospective impacts of the transition to an environmentally sustainable economy on the institution’s counterparties or invested assets;

(52h) “social risk” means the risk of any negative financial impact on the institution stemming from the current or prospective impacts of social factors on its counterparties or invested assets;

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(52i) "governance risk" means the risk of ▌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;';

(o) points (54), (55) and (56) are replaced by the following:

'(54) "probability of default" or "PD" means the probability of default of an obligor ***or, where applicable, of a credit facility*** over a one-year period, and, in the context of dilution risk, the probability of dilution over ***a*** one-year period;

(55) "loss given default" or "LGD" means the▌ ratio of the loss on an exposure related to a single facility due to the default of an obligor or***, where applicable, of a credit*** facility to the amount outstanding at ***default or at a given reference date after the date of*** default, and, in the context of dilution risk, the loss given dilution meaning the ▌ ratio of the loss on an exposure ***related to a purchased receivable*** due to dilution, to the amount outstanding ***of*** the▌ purchased receivable;

(56) "conversion factor" or "credit conversion factor" or "CCF" means the ▌ ratio of the ▌ undrawn amount of a commitment from a single facility that could be drawn from ***that*** single facility ***from a certain point in time*** before default and ▌ therefore ▌ outstanding at default to the▌ 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;';

▌

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(p) 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 the credit facility*** 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 ***credit facility 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;’;

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(q) 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;’;

(r) the following point (74a) is inserted:

‘(74a) “property value” means the value of ***a residential property or commercial*** immovable property determined in accordance with Article 229(1);’;

(s) 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;

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(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);';

(t) the following points (75a) to (75g) are inserted:

'(75a) "commercial immovable property" means any immovable property that is not residential property;

(75b) "income producing real estate exposure" ***or*** 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; ***the primary source of such cash flows would be lease or rental payments, or proceeds from the sale of the residential property or commercial immovable property;***

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(75c) “non-income producing real estate exposure” ***or*** “non-***IPRE*** exposure” means any exposure secured by one or more residential or commercial immovable properties that is not an ***IPRE*** 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~~ residential property or ***an exposure regarded as such in accordance with Article 108(3)***;

(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 ~~commercial immovable property~~;

(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 ~~residential or~~ commercial immovable property or ***an exposure regarded as such in accordance with Article 108(3)***;’;

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(u) points (78) and (79) are replaced by the following:

‘(78) “one-year default rate” means the ratio between the number of ***obligors or, where the definition of default is applied at credit facility level pursuant to the second subparagraph of Article 178(1), credit facilities in respect of which a default is considered to have*** occurred during a period that starts from one year prior to a date of observation T, and the number of obligors, or ▌ where the ***definition of default*** is applied at ***credit*** facility level pursuant to ***the second subparagraph of*** Article ***178(1)***, ***credit facilities*** 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;’***;***

(v) the following point (79a) is inserted:

‘(79a) “non-ADC exposure” means any exposure secured by one or more residential or commercial immovable properties that is not an ADC exposure;

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(w) 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;’;

(x) 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;’**;**

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(y) in point (127), point (b) is replaced by the following:

'(b) the institutions are fully consolidated in accordance with Article 22 of Directive 2013/34/EU and are included in the supervision on a consolidated basis of an institution which is a parent institution in a Member State in accordance with Part One, Title II, Chapter 2 of this Regulation and subject to own funds requirements;';

(z) 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;';

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(aa) ▌─point (145) ***is amended as follows:***

(a) point (f) is replaced by the following:

‘(f) the institution's consolidated assets or liabilities relating to activities with counterparties located in the European Economic Area, excluding intragroup exposures in the European Economic Area, exceed 75 % of both the institution’s consolidated total assets and liabilities, excluding in both cases the intragroup exposures,’;

(b) 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.’;

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(ab) the following points ▌– 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;

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(152a) "fossil fuel sector entity" means a company, enterprise or undertaking statistically classified as having its principal economic activity in the coal, oil or gas sector of economic activities, as laid down in Template 3, of Annex XXXIX to Commission Implementing Regulation (EU) 2021/637 and as identified by reference to the Nomenclature of Economic Activities (NACE) codes listed in Sections B to D and Section G of Annex I to Regulation (EC) No 1893/2006; where the principal economic activity of a company, enterprise or undertaking is not classified using the NACE codes laid down in that Regulation, or a national classification derived therefrom, institutions shall conservatively determine whether such company, enterprise or undertaking has its principal activity in one of those sectors.

(152b) "exposures subject to impacts from environmental or social factors" means exposures hindering the ambition of the Union to achieve its regulatory objectives relating to ESG factors, in a way that could have negative financial impacts on the institutions.

(152c) "shadow-banking entity" means an entity that carries out banking activities outside the regulated framework;';

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

'4a. For purposes of point (18)(a), (b) and (c), EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, specifying the criteria for the identification of activities by … [18 months after entry into force of this amending Regulation].';

(3) 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;';

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(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 ~~,~~;

(5) “credit exposure” means any on-balance ***or*** off~~-~~ balance sheet item***,*** that results, or may result, in a credit obligation;

(6) “facility” ***or “credit facility”*** means a credit exposure arising from ***a*** contract or a set of contracts between an obligor and an institution;

(7) “margin of conservatism” means an~~-~~ add-on incorporated in risk ***parameter*** estimates~~-~~ 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;

(7a) “appropriate adjustment” means the impact on risk parameter estimates resulting from the application of methodologies within the estimation of risk parameters to correct the identified deficiencies in data, estimation methods, and to account for changes to underwriting standards, risk appetite, collection and recovery policies and any other source of additional uncertainty, to the extent possible in order to avoid biases in risk parameter estimates;

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(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 ***such*** 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 ***also*** 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;

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(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) ***the*** contractual arrangements ***allow*** the institution to assess the creditworthiness of the client immediately prior to deciding on the execution of each drawdown ***and the institution has implemented and applies internal procedures that ensure that such assessment is being made before 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 ***where applicable*** at any time without prior notice to the obligor or that effectively provide for automatic cancellation due to deterioration in a borrower's creditworthiness.';

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(4) ***the following Article 5a is inserted:***

'Article 5a

Definitions in relation to crypto-assets

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

(1) ***"crypto-asset" means a crypto-asset within the meaning of Article 3(1), point (5) of Regulation (EU) No 2023/1114 that is not a central bank digital currency;***

(2) ***"electronic money token" or "e-money token" means an electronic money token or e-money token as defined in Article 3(1), point (7) of Regulation (EU) 2023/1114;***

(3) ***"crypto-asset exposure" means an asset or an off-balance sheet item related to a crypto-asset that gives rise to credit, counterparty credit, market, operational or liquidity risks;***

(4) ***"traditional asset" means any asset other than a crypto-asset including:***

(a) ***financial instruments within the meaning of Article 4(1), point (50);***

(b) ***funds including e-money;***

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(c) ***deposits*** ***including structured deposits;***

(d) ***securitisation positions in the context of a securitisation as defined in Article 2, point (1), of Regulation (EU) 2017/2402;***

(e) ***non-life*** ***or life insurance products falling within the classes of insurance listed in Annexes I and II to Directive 2009/138/EC of the European Parliament and of the Council or reinsurance and retrocession contracts referred to in that Directive;***

(f) ***pension*** ***products that, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement and that entitle the investor to certain benefits;***

(g) ***officially*** ***recognised occupational pension schemes within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council or Directive 2009/138/EC;***

(h) ***individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider;***

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(i) a pan-European Personal Pension Product as defined in Article 2, point (2), of Regulation (EU) 2019/1238 of the European Parliament and of the Council;

(j) social security schemes covered by Regulation (EC) No 883/2004 of the European Parliament and of the Council and Regulation (EC) No 987/2009 of the European Parliament and of the Council.

(5) "tokenised traditional asset" means a type of crypto-asset that represents a traditional asset, including e-money token;

(6) "asset-referenced token" means a asset-referenced token as defined in Article 3(1), point (6) of Regulation (EU) 2023/1114;

(7) "crypto-asset service" means a crypto-asset service as defined in Article 3(1), point (16) of Regulation (EU) 2023/1114.';

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(5) 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 ***EU*** 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.’;

(6) in Article ***13(1***), the ***second subparagraph*** is replaced by the following:

‘Large subsidiaries of EU parent institutions shall disclose the information specified in Articles 437, 438, 440, 442, 449a, 449b 450, 451, 451a and 453 on an individual basis or, where applicablein accordance with this Regulation and Directive 2013/36/EU, on a sub-consolidated basis.’;

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(7) Article 18 is amended as follows:

(a) paragraph 2 is deleted;

(b) paragraph 4 is replaced by the following:

'4. Participations in institutions and financial institutions managed by an undertaking included in the consolidation together with one or more undertakings not included in the consolidation shall be consolidated proportionally according to the share of capital held, where the liability of those undertakings is limited to the share of the capital they hold.';

(b) the last subparagraph of paragraph 6 is replaced by the following:

'In particular, competent authorities may permit or require the use of the method provided for in Article 22(7), (8) and (9) of Directive 2013/34/EU.';

(c) in paragraph 7, ***the*** first sub-paragraph 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. ***That method shall not, however, constitute inclusion of the undertakings concerned in supervision on a consolidated basis;';***

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(d) in paragraph 8, the introductory part is replaced by the following:

'8. Competent authorities may require full or proportional consolidation of a subsidiary or an undertaking in which an institution holds a participation where that subsidiary or undertaking is not an institution or a financial institution and where all the following conditions are met:';

(e) a new paragraph 10 is inserted:

'10. EBA shall report to the Commission by ***…*** [1 year after the entry into force of this ***amending*** Regulation] on the completeness and appropriateness of the 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 update its report ***at least once every two years***.

In the light of EBA'***s*** findings, the Commission ***shall***, ***where*** appropriate, ***submit to the European Parliament and to the Council a legislative proposal to make adjustments to*** the relevant definitions or the scope of prudential consolidation.***';***

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(8) Article 19 is amended as follows:

(a) in paragraph 1, the introductory part is replaced by the following:

'1. An ***institution*** *or a financial institution which is a subsidiary or an undertaking in which a participation is held, need not to be included in the consolidation where the total amount of assets and off-balance sheet items of the undertaking concerned is less than the smaller of the following two amounts:';*

(b) in paragraph 2, the introductory part is replaced by the following:

'2. The competent authorities responsible for exercising supervision on a consolidated basis pursuant to Article 111 of Directive 2013/36/EU may on a case-by-case basis decide in the following cases that an institution, or a financial institution which is a subsidiary or in which a participation is held need not be included in the consolidation:';

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(9) 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, ***paragraph*** 9, Article 283 and Article ***325az*** 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.’***;***

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(c) ***paragraph*** *8 is replaced by the following:*

'8. EBA shall develop draft implementing technical standards to specify the joint decision process referred to in point (a) of paragraph 1 with regard to the applications for permissions referred to in Article 143(1), Article 151(9), Article 283, and Article 325az with a view to facilitating joint decisions.

EBA shall submit those draft implementing technical standards to the Commission by … [OP please insert date = 1 year after entry into force of this Regulation].

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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(10) Article 22 is replaced by the following:

'Article 22

Sub-consolidation in case of entities in third countries

1. ***Subsidiary*** *institutions or subsidiary intermediate parent financial holding companies or intermediate parent mixed financial holding companies shall apply the requirements laid down in Articles 89, 90 and 91 and Parts Three, Four and Seven and the associated reporting requirements laid down in Part Seven A on the basis of their sub-consolidated situation if they have an institution or a financial institution as a subsidiary in a third country, or hold a participation in such an undertaking.*

2. By way of derogation from paragraph 1 of this Article, subsidiary institutions or subsidiary intermediate parent financial holding companies or intermediate parent mixed financial holding companies may choose not to apply the requirements laid down in Articles 89, 90 and 91 and Parts Three, Four and Seven and the associated reporting requirements laid down in Part Seven A on the basis of their sub-consolidated situation where the total assets and off-balance-sheet items of the subsidiaries and participations in third countries are less than 10 % of the total amount of the assets and off-balance-sheet items of the subsidiary institution or subsidiary intermediate parent financial holding company or intermediate parent mixed financial holding company.';

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(11) in Article 27(1), point (a), point (v) is deleted;

(12) 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***, in consultation with ESMA,*** 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 **….** [**—**2 years after the entry into force of this ***amendingRegulation***].

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.’;

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(13) 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) paragraph 1 ***is amended as follows:***

(i) in point (k), point (v) is deleted;

(ii) ***in point (k), the following point is added:***

‘(vi) exposures in the form of units or shares in a CIU that are assigned a risk-weight of 1 250 % in accordance with Article 132(2), second subparagraph.’;

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(c) the following paragraph is added:

'5. For the sole purpose of calculating the applicable amount of insufficient coverage for non-performing exposures in accordance with paragraph 1, point (m) of this Article, by way of derogation from Article 47c and after having notified the competent authority, the applicable amount of insufficient coverage for non-performing exposures purchased by a specialised debt restructurer shall be zero. The derogation set out in this subparagraph shall apply on an individual basis and, in case of groups in which all institutions qualify as specialised debt restructurers, on a consolidated basis.

For the purposes of this paragraph, "specialised debt restructurer" means an institution that, during the preceding financial year, complied with all the following conditions on both an individual and consolidated basis:

(a) the main activity of the institution is the purchase, management and restructuring of non-performing exposures in accordance with a clear and effective internal decision process implemented by its management body;

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(b) the accounting value measured without taking into account any credit risk adjustments of its own originated loans does not exceed 15 % of its total assets;

(c) at least 5 % of the accounting value measured without taking into account any credit risk adjustments' of its own originated loans constitutes a total or partial refinancing, or the adjustment of relevant terms, of the purchased non-performing exposures that qualifies as a forbearance measure in accordance with Article 47b of this Regulation;

(d) the total assets of the institution do not exceed EUR 20 billion;

(e) the institution maintains, on an ongoing basis, a net stable funding ratio of at least 130 %;

(f) the sight deposits of the institution do not exceed 5 % of total liabilities of the institution.

The specialised debt restructurer shall without undue delay notify the competent authority if one or more of the conditions are no longer met. Competent authorities shall notify EBA at least on an annual basis of the application of this paragraph by institutions under their supervision.

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EBA shall establish, maintain, and publish a list of specialised debt restructurers. EBA shall monitor the activity of specialised debt restructurers, and shall report by 2028, to the Commission on the results of such monitoring and, where appropriate, shall advise the Commission as to whether the conditions to qualify as "specialised debt restructurer" are sufficiently risk-based, appropriate in view of favouring the secondary market for non-performing loans and assess if additional conditions are necessary.';

(14) 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) ~~to~~ (***vi***) 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;';

(15) Article 47c is amended as follows:

(a) paragraph 4 is amended as follows:

(i) the introductory part is replaced by the following:

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

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

'(b) 1 for the secured part of the non-performing exposure to be applied as of the first day of the eighth year following its classification as non-performing, unless the eligible protection provider agreed to fulfill all payment obligations of the obligor towards the institution in full and in accordance with the original contractual payment schedule, in which case a factor of 0 for the secured part of the non-performing exposure will apply.';

(b) the following paragraph is inserted:

'4a. By way of derogation from paragraph 3 of this Article, the part of the non-performing exposure guaranteed or insured by an official export credit agency shall not be subject to the requirements laid down in this article.';

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(16) 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)-~~to~~ (***vi***) 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)-~~to~~ (***vi***) and points (l), (m) and (n), excluding deferred tax assets that rely on future profitability and arise from temporary differences.’;

(17) 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 %.’;

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(18) 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)-***to*** (***vi***) and points (l), (m) and (n), excluding deferred tax assets that rely on future profitability and arise from temporary differences;’;

(19) 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.’;

(20) 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)-***to*** (***vi***) 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;’;

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(21) 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:';

(22) 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)-*to* (*vi*) 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;';

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

'Article 74

Holdings of capital instruments issued by regulated financial sector entities that do not qualify as regulatory capital

Institutions shall not deduct from any element of own funds direct, indirect or synthetic holdings of capital instruments issued by a regulated financial sector entity that do not qualify as regulatory capital of that entity. Institutions shall apply risk weights to such holdings in accordance with Chapter 2 of Title II of Part Three.';

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(24) Article 84(1) is amended as follows :

(a) in the first paragraph, 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 ***one of those listed in Article 81(1), point (a), but not an investment firm or an intermediate investment holding company***, 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, or any local supervisory regulations in third countries insofar as those requirements are to be met by Common Equity Tier 1 capital***;***

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– *where the subsidiary is an investment firm or an intermediate investment holding company, 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*;

(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 point (a) of Article 92(1) of this Regulation, the requirements referred to in Articles 458 and 459 of this Regulation, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU and the combined buffer requirement defined in point (6) of Article 128 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.

By way of derogation from point (a) of the first subparagraph, the competent authority may allow institutions to subtract either of the amounts referred to in point (i) or in point (ii), once the institution has demonstrated to the satisfaction of the competent authority that the additional amount of minority interest is available to absorb losses at consolidated level;';

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(b) in paragraph 5, point (c) is replaced by the following:

'(c) it consolidates a subsidiary institution in which it has only a minority holding by virtue of the control relationship in the meaning of Article 4(1), point (37);';

(25) 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 ***one of those listed in Article 81(1), point (a), but not*** an investment firm ***or an intermediate investment holding company***, 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, or any local supervisory regulations in third countries insofar as those requirements are to be met by Tier 1 capital;***

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– ***where the subsidiary is an investment firm or an intermediate investment holding company, 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;***

(ii) the amount of consolidated 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 point (b) of Article 92(1) of this Regulation, the requirements referred to in Articles 458 and 459 of this Regulation, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU and the combined buffer requirement defined in point (6) of Article 128 of that Directive, or any local supervisory regulations in third countries, insofar as those requirements are to be met by Tier 1 Capital.

By way of derogation from point (a) of the first subparagraph, the competent authority may allow institutions to subtract either of the amounts referred to in point (i) or in point (ii), once the institution has demonstrated to the satisfaction of the competent authority that the additional amount of minority interest is available to absorb losses at consolidated level;';

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(26) Article 87(1), point (a) is replaced by the following:

*'(a) the own **funds** of the subsidiary minus the lower of the following:*

(i) the amount of own funds of the subsidiary required to meet the following:

*– where the **subsidiary** is one of those listed in Article 81(1), point (a), but not an investment firm or an intermediate investment holding company, the sum of the requirement laid down in Article 92(1), point (c), 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, or any local supervisory regulations in third countries insofar as those requirements are to be met by own funds;*

– where the subsidiary is an investment firm or an intermediate investment holding company, 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 own funds;

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(ii) the amount of own funds that relates to that subsidiary that is required on a consolidated basis to meet the sum of the requirement laid down in point (c) of Article 92(1) of this Regulation, the requirements referred to in Articles 458 and 459 of this Regulation, the specific own funds requirements referred to in Article 104 of Directive 2013/36/EU and the combined buffer requirement defined in point (6) of Article 128 of that Directive, or any local supervisory regulations in third countries, insofar as those requirements are to be met by *own funds.*

By way of derogation from point (a) of the first subparagraph, the competent authority may allow institutions to subtract either of the amounts referred to in point (i) or in point (ii), once the institution has demonstrated to the satisfaction of the competent authority that the additional amount of minority interest is available to absorb losses at consolidated level;’;

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(27) 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).’;

(28) Article 89 is ***amended as follows:***

(a) ***paragraphs 1 and 2 are*** 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.

2. The total e amountof the qualifying holdings of an institution in undertakings other than those referred to in paragraph 1 that exceeds 60 % of its eligible capital shall be subject to the provisions laid down in paragraph 3.’;

(b) paragraph 4 is deleted;

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(29) Article 92 is amended as follows:

(a) ***paragraphs*** 3 and 4 are replaced by the following:

‘3. The total risk exposure amount shall be calculated as follows:

(a) ***institutions*** shall calculate the total risk exposure amount as follows:

$$TREA = \max\{U\text{-}TREA; x \cdot S\text{-}TREA\}$$

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 %;

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(b) ***by way of derogation from point (a), a Member State may decide that*** the total risk exposure amount shall be ***the un-floored total risk exposure amount,*** calculated in accordance with paragraph ***4, for institutions which are part of a group with a parent institution in the same Member State, provided that this parent institution or, in the case of groups composed of a central body and permanently affiliated institutions, the whole as constituted by the central body together with its affiliated institutions calculates its total risk exposure amount in accordance with point (a) on a consolidated basis.***

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 ***6***:

(a) the risk-weighted exposure amounts for credit risk and dilution risk, calculated in accordance with Title II and Article 379, in respect of all the business activities of an 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;

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(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 ***credit*** risk 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;

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(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 ~~–~~ 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 ***6*** 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 ***credit*** risk ~~–~~ 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;

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(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 ***4***, point (b)(i) ***shall be calculated without using:***

(i) the alternative internal model approach set out in Part Three, Title IV, Chapter 1b; or

(ii) 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;

(c) the own funds requirements for all its business activities that are subject to foreign exchange risk or commodity risk referred to in point (c) of paragraph ***4*** shall be calculated without using the alternative internal model approach set out in Part Three, Title IV, Chapter 1b.

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6. The following provisions shall apply to the calculations of the ~~–~~ un-floored ***total*** risk exposure amount referred to in paragraph 4 and of the standardised ***total*** risk exposure amount referred to in paragraph 5:

(a) the own funds requirements referred to in paragraph 4, points (c), (ca), (d)***, (e)*** and (***f***), 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.';

(30) 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);'***;***

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(31) Article 94 is amended as follows:

(a) the introductory part of paragraph 1 is replaced by the following:

'By way of derogation from, point (b) of Article 92(4), and Article 92(5), point (b), institutions may calculate the own funds requirement for their trading-book business in accordance with paragraph 2 of this Article, provided that the size of the institutions' on- and off-balance-sheet trading-book business is equal to or less than both of the following thresholds on the basis of an assessment carried out on a monthly basis using the data as of the last day of the month:';

(b) in paragraph 2, points (a) and (b) are replaced by the following:

'(a) for the contracts listed in point 1 of Annex II, contracts relating to equities which are referred to in point 3 of that Annex and credit derivatives, institutions may exempt those positions from the own funds requirement referred to in point (b) of Article 92(4) and Article 92(5), point (b);

(b) for trading book positions other than those referred to in point (a) of this paragraph, institutions may replace the own funds requirement referred to in point (b) of Article 92(4) and Article 92(5), point (b) with the requirement calculated in accordance with point (a) of Article 92(4) and Article 92(5), point (a).';

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(c) paragraph 3 is amended as follows:

(i) point (c) is replaced by the following:

'(c) the absolute value of the aggregated long position shall be summed with the absolute value of the aggregated short position.';

(ii) the following subparagraphs are added:

'For the purpose of the first subparagraph, a long position means that the market value of the position increases when the value of its main risk driver increases, and a short position means that the market value of the position decreases, when the value of the main risk driver of the position increases.

For the purposes of the first subparagraph, the value of the aggregated long (short) position shall be equal to the sum of the values of the individual long (short) positions included in the calculation in accordance with point (a).';

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(d) the following paragraph 10 is added:

'10. EBA shall develop draft regulatory technical standards to specify the method for identifying the main risk driver of a position and for determining whether a transaction represents a long or a short position as referred to in Articles 94(3), 273a(3) and 325a(2).

In developing those draft regulatory technical standards, EBA shall take into consideration the method developed for the regulatory technical standards mandated in accordance with Article 279a(3), point (b).

EBA shall submit those draft regulatory technical standards to the Commission by … [1 year after entry into force of this amending 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.';

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(32) in Article 95(2), point (a) is replaced by the following:

'(a) the sum of the items referred to in Article 92(4), points (a) to (d) and (f), after applying Article 92(6);';

(33) in Article 96(2), point (a) is replaced by the following:

'(a) points (a) to (d) and (f) of Article 92(4) after applying Article 92(6);';

(34) 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.';

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(35) 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.

An institution shall have in place an independent risk control function which shall evaluate, on an ongoing basis, whether its instruments are being properly assigned to the trading or non-trading book.

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”);

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(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) ***instruments*** 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 ▌in the non-trading book that relate to credit or equity risk.

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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***, or other derivative,*** from its own liability ***–***in the non-trading book that ***relates*** to credit or equity risk***. It shall assign the embedded option, or other derivative, to the trading book*** and shall ***leave*** the own liability ***in the non-trading book.***

Where, due to its nature, it is not possible to split the instrument, the institution shall assign the whole instrument to the trading ***book. In such a case, the institution shall duly document the reason for applying that treatment***.

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;

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(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) and (i)***;

(h) own liabilities of the institution, unless such instruments meet the criteria referred to in paragraph 2, point (e) ***or the criteria referred to in the third subparagraph of paragraph 2***.

(i) instruments in hedge funds

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.

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4a. By way of derogation from paragraph 3, an institution may assign to the trading book a position in an instrument referred to in point (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 held with trading intent or hedges positions held with trading intent and that the institution meets at least one of the conditions specified in paragraph 7 for that position.

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.

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7. An institution shall assign to the trading book a position in a collective investment undertaking***, other than the positions referred to in paragraph 3, point (f),*** that is held with trading intent~~.~~***,*** 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 **…** [***36*** months after the entry into force of this ***amending*** 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.';

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(36) 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 ***... [36 months after the entry into force of this amending Regulation]*** 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.’;

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(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.’;

(37) 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.’;

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(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.’;

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(38) 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;

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(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);

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(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 ... [2 years after the entry into force of this ***amending*** Regulation].

Power is delegated to the Commission to ***supplement this Regulation by adopting*** regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.***'***;

(39) Article 106 is amended as follows:

(a) ***paragraph 3 is replaced by the following:***

'Where an institution hedges a non-trading book credit risk exposure or counterparty risk exposure using a credit derivative booked in its trading book, that credit derivative position shall be recognised as an internal hedge of the non-trading book credit risk exposure or counterparty risk exposure for the purpose of calculating the risk-weighted exposure amounts referred to in point (a) of Article 92(4) where the institution enters into another credit derivative transaction with an eligible third party protection provider that meets the requirements for unfunded credit protection in the non-trading book and perfectly offsets the market risk of the internal hedge.

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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) ~~[~~ ***paragraph*** 4 ~~]~~ is replaced by the following:

'4. Where an institution hedges a non-trading book equity risk exposure using an equity derivative booked in its trading book, that equity derivative position shall be recognised as an internal hedge of the non-trading book equity risk exposure for the purpose of calculating the risk-weighted exposure amounts referred to in point (a) of Article 92(4) where the institution enters into another equity derivative transaction with an eligible third party protection provider that meets the requirements for unfunded credit protection in the non-trading book and perfectly offsets the market risk of the internal hedge.

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.';

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(c) the following paragraph is inserted:

'4a. For the purposes of paragraphs 3 and 4, the credit or equity derivative transaction entered into by an institution may be composed of multiple transactions with multiple eligible third party protection providers, provided that the resulting aggregated transaction meets the conditions set out in those paragraphs.'

(d) 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) ***for the purposes of calculating*** 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;

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(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.';

(e) 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.

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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.';

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(f) 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;

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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.';

(40) ~~Article 107~~ ***is amended as follows:***

(a) 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.

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3. For the purposes of this Regulation, exposures to third country investment firms[redacted]***,*** third country credit institutions and[redacted]third country [redacted] 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***.';***

(41) 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) ***and***, where relevant, expected loss (EL) amounts for the purposes of the calculation referred to in Article 36(1) point (d) and Article 62 point (***d***).

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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 ***accordance with Chapter 3 in the calculation of*** risk-weighted exposure amounts ***for the purposes of Article 92(4), points (a) and (f), and, where relevant,*** expected loss ***(EL)*** amounts ***for the purposes of the calculation referred to in Article 36(1), point (d), and Article 62, point (d)***.

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 ***accordance with Chapter 3 in the calculation of*** risk-weighted exposure amounts ***for the purposes of Article 92(4), points (a) and (f), and, where relevant,*** expected loss ***(EL)*** amounts ***for the purposes of the calculation referred to in Article 36(1), point (d), and Article 62, point (d)***. In all other cases, ***for those purposes,*** the institution may take into account the effect of UFCP in risk-weighted exposure amounts and expected loss amounts in accordance with Chapter 4.

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3. Subject to the conditions set out in paragraph 4, ***institutions may regard*** loans ***to natural persons*** 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 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 ***natural persons*** for the purchase of residential properties in that Member State are guaranteed by a ***protection provider*** 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 ***protection provider*** referred to in point (b) ***does not meet or becomes unable to meet its obligations under the guarantee provided***.

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 ***protection providers*** eligible to that treatment which fulfil the conditions of this paragraph and paragraph 4.

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EBA shall publish the list of all such eligible ***protection providers*** 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 ***for the loans granted from 1 January 2014*** the borrower is contractually committed not to grant any mortgage lien without the consent of the institution that originally granted the loan;

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(d) the ***protection provider*** is an eligible protection provider as referred to in Article 201, and ▌has a credit assessment by an ECAI corresponding to a credit quality step of 1 or 2;

(e) the ***protection provider*** is an institution or a financial sector entity subject to capital requirements ***comparable*** to those applicable to institutions or insurance undertakings;

(f) the ***protection provider*** 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 ***periodic*** stress testing***, at least every two years***;

(g) the institution is contractually and legally allowed to take a mortgage on the residential property in the event that the ***protection provider does not meet or becomes unable to meet its obligations under the guarantee provided***;

4a. ***Institutions*** that▌ exercise the option provided for in paragraph 3 for a given eligible ***protection provider*** under the mechanism referred to in ***that*** paragraph▌ shall do so for all its ▌exposures ***to natural persons*** guaranteed by that ***protection provider*** under that mechanism.***'***;

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(42) 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.’;

(43) 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.

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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.

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4. ***Contractual*** arrangements offered by an institution, but not yet accepted by the client, that would become commitments if accepted by the client, ***shall be*** treated as commitments ***and*** the percentage applicable shall be ***the one*** provided for in accordance with paragraph 2.

For contractual arrangements that meet the conditions specified in Article 5, point (9), second subparagraph, the applicable percentage shall be 0 %.

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.

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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.';

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(44) in Article 112, ***points (i) and*** (k) ***are*** replaced by the following:

‘***(i) exposures secured by mortgages on immovable property and ADC exposures;***

(k) subordinated debt exposures;’;

(45) 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 ***are*** deducted from own funds ***or are subject to the treatment set out in Article 72e(5), first subparagraph***, in accordance with ***the provisions of*** Section 2***. The application of risk weights shall be*** based on the exposure class to which ***the exposure is*** assigned and, to the extent specified in Section 2, ***its*** credit quality. 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, ***points*** (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 ***quality step to which the exposure would be assigned based on the applicable 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.***’***;

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(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.’***;***

(c) paragraph 5 is replaced by the following:

‘5. The exposure value of any item for which no risk weight is provided under Chapter 2 shall be assigned a risk weight of 100 %.’;

(d) the introductory sentence of paragraph 6 is replaced by the following:

‘With the exception of exposures giving rise to Common Equity Tier 1, Additional Tier 1 or Tier 2 items, an institution may, subject to the prior approval of the competent authorities, decide not to apply the requirements of paragraph 1 of this Article to the exposures of that institution to a counterparty which is its parent undertaking, its subsidiary, a subsidiary of its parent undertaking, or an undertaking linked to the institution by a relationship within the meaning of Article 22(7) of Directive 2013/34/EU. Competent authorities are empowered to grant approval if the following conditions are fulfilled:’;

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(e) in paragraph 6, point (a) is replaced by the following:

'(a) the counterparty is an institution or a financial institution subject to appropriate prudential requirements;';

(46) Article 115 is amended as follows:

(a)paragraph (-1) is inserted:

'-1. Exposures to regional governments or local authorities for which a credit assessment by a nominated ECAI is available shall be assigned a risk weight in accordance with Table 1a which corresponds to the credit assessment of the ECAI in accordance with Article 136.

Table 1a:

Credit quality step	*1*	*2*	*3*	*4*	*5*	*6*
Risk weight	*20 %*	*50 %*	*50 %*	*100 %*	*100 %*	*150 %*

';

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*(b)**paragraph** 1 is replaced by the following:*

‘1. Exposures to regional governments or local authorities for which a credit assessment by a nominated ECAI is not available shall be assigned a risk weight in accordance with the credit quality step to which exposures to the central government of the jurisdiction in which regional governments or local authority is incorporated are assigned in accordance with Table 1b.

Table 1b:

Credit quality step	*1*	*2*	*3*	*4*	*5*	*6*
Risk weight	*20 %*	*50 %*	*100 %*	*100 %*	*100 %*	*150 %*

For exposures to unrated regional governments or local authorities in countries where the central government is unrated the risk weight shall be 100 %.’;

*(c) in **paragraph** 2, the first subparagraph is replaced by the following:*

‘2. By way of derogation from paragraphs -1 and 1, exposures to regional governments or local authorities shall be treated as exposures to the central government in whose jurisdiction they are established where there is no difference in risk between such exposures because of the specific revenue-raising powers of the former, and the existence of specific institutional arrangements the effect of which is to reduce their risk of default.’;

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(d) paragraph 3 is replaced by the following:

'3. Exposures to churches or religious communities constituted in the form of a legal person under public law shall, in so far as they raise taxes in accordance with legislation conferring on them the right to do so, be treated as exposures to regional governments and local authorities. In this case, paragraph 2 shall not apply.';

(e) in paragraph 4, the the first subparagraph is replaced by the following:

'By way of derogation from paragraphs -1 and 1, when competent authorities of a third country jurisdiction which applies supervisory and regulatory arrangements at least equivalent to those applied in the Union treat exposures to regional governments or local authorities as exposures to their central government and there is no difference in risk between such exposures because of the specific revenue-raising powers of regional government or local authorities and to specific institutional arrangements to reduce the risk of default, institutions may risk weight exposures to such regional governments and local authorities in the same manner.'

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(f) paragraph 5 is replaced by the following:

'5. By way of derogation from paragraphs -1 and 1, exposures to regional governments or local authorities of the Member States that are not referred to in paragraphs 2 to 4 and are denominated and funded in the domestic currency of that regional government and local authority shall be assigned a risk weight of 20 %.';

(47) Article 116 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Exposures to public sector entities for which a credit assessment by a nominated ECAI is available shall be treated in accordance with Article 115(-1).';

(b) in paragraph 4, the following subparagraph is added:

'EBA shall maintain a publicly available database of all public-sector entities within the Union referred to in the first subparagraph.';

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(48) in Article 117(1), the first subparagraph is replaced by the following:

'1. Exposures to multilateral development banks that are not referred to in paragraph 2 and for which a credit assessment by a nominated ECAI is available shall be risk weighted in accordance with Table 2a. The risk weight for exposures to multilateral development banks that are not referred to in paragraph 2 for which a credit assessment by a nominated ECAI is not available shall be 50 %.

Table 2a:

Credit quality step	***1***	***2***	***3***	***4***	***5***	***6***
Risk weight	***20 %***	***30 %***	***50 %***	***100 %***	***100 %***	***150 %***

';

(49) in Article 119, paragraphs 2 and 3 are deleted;

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(50) 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 %***

’;

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(51) 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)***, taking into account Articles 458(2)(d)(i), 458(2)(d)(vi) and 459(a) where applicable***, 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***, or*** any equivalent ***and*** 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***, as applicable***;

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(iii) information about ***whether*** the requirements referred to in point (ii) ***are met or exceeded by the institution*** is publicly disclosed or otherwise made available ***to the lending institution***;

(iv) the assessment ***performed by the lending institution*** 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), ***taking into account*** Articles ***458(2)(d)(i)*** and ***Article*** 459***(a) where applicable***, the specific own funds requirements referred to in Article 104a of Directive 2013/36/EU***, or*** any equivalent ***and*** 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***, as applicable***;

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(iii) information about ***whether*** the requirements referred to in point (ii) ***are met or exceeded by the institution*** is publicly disclosed or otherwise made available ***to the lending institution***;

(iv) the assessment performed ***by the lending institution*** 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 ***and*** 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 ***exposures to institutions are not assigned*** to Grade A or ***B***, 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;

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(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.

1a. For exposures to financial institutions treated as exposures to institutions in accordance with Article 119(5), for the purpose of assessing whether the conditions set out in paragraph 1, points (a)(ii) and (b)(ii), of this Article are met by those financial institutions, institutions shall assess whether those financial institutions meet or exceed any comparable prudential requirements.

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.

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(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 ***equal to or*** 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 ***%***	***150 %***
Risk weight	40 ***%***	***75 %***	***150 %***

';

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(52) 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 %.’;

(53) 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;

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(b) the exposure is not ▌–related to the financing of real estate ***and is within the definitions of object finance, project finance or commodities finance exposures laid down in paragraph 3***;

(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	***6***
Risk weight	20 ***%***	***50 %***	***75 %***	***100 %***	***150 %***	***150 %***

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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 ▌ ("object finance exposures"), institutions shall apply ***a*** risk ***weight of*** 100 %***.***

▌

(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 %;

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(c) where the purpose of a specialised lending exposure is to finance a ***individual*** project***, either in the form of construction of a new capital installation or refinancing of an existing installation, with or without improvements*** for the development or acquisition of large, complex and expensive installations, including power plants, chemical processing plants, mines, transportation infrastructure, environment, and telecommunications infrastructure, ***in which*** the ***lending institution looks primarily*** to ***the revenues*** generated by the ***financed*** project***, both as*** the ***source of repayment and as security for the loan*** ("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;

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– the obligor has sufficient reserve funds fully funded in cash, or other financial arrangements– with ***an entity,*** to cover the contingency funding and working capital requirements over the lifetime of the project being financed***,***

provided that the entity is assigned an ECAI rating by a recognised ECAI with a credit quality step of at least 3

or,

in the case of institutions calculating risk-weighted exposure amounts and expected loss amounts in accordance with Chapter 3, where the entity does not have a credit assessment by a recognised ECAI, that entity is assigned with an internal credit rating equivalent to a credit quality step of at least 3 by the institution, provided that that entity is internally rated by the institution in accordance with the provisions of Section 6 of Chapter 3;

– the ***project to which the exposure is related*** generates cash flows that are predictable and cover all future loan repayments;

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– ***where the revenues of the obligor are not funded by payments from a large number of users,*** 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 ***by a recognised ECAI***;

or,

in the case of institutions calculating risk-weighted exposure amounts and expected loss amounts in accordance with Part Three, Title II, Chapter 3, where the central bank, central government, regional government or local authority do not have a credit assessment by a recognised ECAI, they are assigned with an internal credit rating equivalent to a credit quality step of at least 3 by the institution, provided that they are internally rated by the institution in accordance with the provisions of Section 6 of Chapter 3

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- 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 ***by a recognised ECAI***

  or,

  in the case of institutions calculating risk-weighted exposure amounts and expected loss amounts in accordance with Part Three, Title II, Chapter 3, where the public sector entity does not have a credit assessment by a recognised ECAI, that public sector entity is assigned with an internal credit rating equivalent to a credit quality step of at least 3 by the institution, provided that that public sector entity is internally rated by the institution in accordance with the provisions of Section 6 of Chapter 3;

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- a corporate entity which has been assigned an ECAI rating with a credit quality step of at least 3 ***by a recognised ECAI,***

  or,

  in the case of institutions calculating risk-weighted exposure amounts and expected loss amounts in accordance with, Chapter 3, where the corporate entity does not have a credit assessment by a recognised ECAI, that corporate entity is assigned an internal credit rating equivalent to a credit quality step of at least 3 by the institution, provided that that corporate entity is internally rated by the institution in accordance with the provisions of Section 6 of Chapter 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 ***main counterparty or other counterparties which similarly comply with the eligibility criteria for the main counterparty*** effectively protect the lending institution against losses resulting from the termination of the project;

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– all assets and contracts necessary to operate the project have been pledged to the lending institution to the extent permitted by applicable law;

– the lending institution ***is*** able to take control of the obligor entity ***in case of a*** default ***event***;

(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***, meaning that, once construction is completed, the obligor is entitled, as long as contract conditions are fulfilled, to payments from its contractual counterparties which cover operating and maintenance costs, debt service costs and equity returns as the obligor operates the project, and these payments are not subject to swings in demand, such as traffic levels, and are adjusted typically only for lack of performance or lack of availability of the asset to the public;***

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(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 ***or that is economically comparable*** 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 (c)(ii), are met.

EBA shall submit those draft regulatory technical standards to the Commission by … [***24 months*** after ▌entry into force of this ***amending*** 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.';

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~~(54) 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 ~~to~~ one or more natural persons ***or*** to an SME within the meaning of Article 5, point (8)~~.~~ ***;***

(b) 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 ***referred to in Article 4(1), point (75d),*** 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;

(***c***) the exposure represents one of a significant number of exposures with similar characteristics, such that the risks associated with such exposure are substantially reduced;

(***d***) 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.

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The present value of retail minimum lease payments shall be eligible for the retail exposure class.

By … [OP please insert the date = 1 year after entry into force of this Regulation], 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 (***c***)[redacted].

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 %.

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3a. Where any of the criteria referred to in paragraph 1 are not met for an exposure to one or more natural persons, the exposure shall be considered retail exposure and the risk weight shall be 100 %.

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.';

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(55) the following Article 123a is inserted:

‘Article 123a

Exposures with a currency mismatch

1. ***For exposures*** to natural persons ***that are*** assigned to ***the retail exposure class referred to*** in ***Article 112,*** point (h)***,*** or ***for exposures to natural persons that qualify as exposures secured by mortgages on residential property, that are assigned to the exposure class referred to in*** Article 112***, point (i)***, 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 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 ***each*** 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.

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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.

3. By derogation from paragraph 1, where the pair of currencies mentioned in, paragraph 1, point (a), is composed of the euro and the currency of a Member State participating in the second stage of the economic and monetary union (ERM II), the multiplying factor of 1,5 shall not apply;';

(56) 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***, or any part of a non -ADC exposure that exceeds the nominal amount of the lien of the property,*** shall be treated as follows:

(a) a non-IPRE exposure shall be ***risk weighted*** as an exposure ***to the counterparty that is*** not secured by the immovable property concerned;

(b) an IPRE exposure shall be risk-weighted at 150 %.

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2. A non-ADC exposure***, up to the nominal amount of the lien on the*** property, where all ***of*** the conditions laid down in paragraph 3 are met, shall be treated as follows:

(a) where the exposure is secured by a residential property,

(i) ***a non-IPRE*** exposure shall ***be treated in accordance with Article 125(1):***

(ii) an IPRE exposure shall be treated in accordance with Article 125(1) where the exposure meets any of the following conditions:

(***1***) 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;

(***2***) the exposure is to ***a natural person*** 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 ***natural person*** 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;

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(*3*) the exposure[...] is to associations or cooperatives of ***natural persons*** that are regulated by law and solely exist to grant their members the use of a primary residence in the property securing the loans;

(*4*) the exposure is[...] 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;

(***iii***) ***an IPRE*** exposure ***which*** does not meet any of the conditions laid down in point (a)***(ii)***, points (*1*) to (*4*), the exposure shall be treated in accordance with Article 125(2);

(***b***) 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 ***referred to 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;

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(ii) the immovable property is forest or agricultural land;

(iii) ***the lending is to a natural person and*** the immovable property is ***either a*** residential property under construction or it is land upon which a residential property is planned to be constructed where that plan has been ***legally*** approved by all ***relevant*** authorities***, as applicable,*** and where any of the following conditions is met:

– the ***immovable*** property does not have more than four residential housing units and will be the primary residence of the obligor and the lending to the ***natural person*** is not indirectly financing ADC exposures;

– a central government, regional government or local authority or a public sector entity ***involved***, 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; ***alternatively, there is an equivalent legal mechanism to ensure that the property under construction is completed within a resonable timeframe;***

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(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; ***institutions shall put in place underwriting policies with respect to the origination of exposures secured by immovable property that includes the assessment of the ability of the borrower to repay. The underwriting policies shall include the relevant metrics for this assessment and their respective maximum levels;***

(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.

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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;

4a. For the purposes of calculating risk-weighted exposures amounts for undrawn facilities, liens that satisfy all eligibility requirements set out in paragraph 3, and where applicable paragraph 4, can be recognised where drawing under the facility is conditional on the prior or simultaneous filing of a lien to the extent of the institution's interest in the lien once the facility is drawn, such that the institution does not have any interest in the lien to the extent the facility is not drawn.

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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 ***accounting value of the asset item*** 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***; this*** gross exposure amount shall be calculated without taking into account ***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;***

(b) ***the gross*** exposure ***amount shall be calculated without taking into account*** 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;

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(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.

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5a. Exposures to a tenant under an immovable property leasing transaction under which the institution is the lessor and the tenant has an option to purchase shall qualify as exposures secured by immovable property and shall be treated in accordance with the treatment set out in Articles 125 or 126 if the applicable conditions referred to in these Articles are met.

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 ***7***.

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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 ***and*** 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 ***risk*** 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.

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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 ***and may indicate, when necessary, whether they consider that the adjustments to risk weights and criteria are also recommended to other Member States***. 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.

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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), ***the first sub-paragraph of Article 125(2),*** Article 126(1), point (a)***, or the first sub-paragraph of Article 126(2), or impose stricter criteria than those set out in paragraph 3 of this Article for exposures to one or more property segments secured by mortgages on immovable property located in one or more parts of the territory of the Member State of the relevant authority***. The authority shall not increase those ***risk weights*** to more than 150 %.

For the purposes of the second subparagraph of this paragraph, the authority designated in accordance with paragraph 6 ***may also reduce the percentages of the property value referred to in Article 125(1) or in Article 126(1) or the ETV percentages that define the ETV-risk weight bucket laid down in table 6aaa in Article 125(2) or in table 6c in Article 126(2). The designated authority shall ensure consistency across all ETV-risk weight buckets, such that the risk weight of a lower ETV-risk weight bucket is always lower or equal to the risk weight of an upper ETV-risk weight bucket.***

8. ***Where the authority designated in accordance with paragraph 6*** sets higher risk weights or stricter criteria pursuant to ~~paragraph~~ ***7***,~~–~~ institutions shall have a six-month transitional period to apply them.

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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 paragraph 7.

EBA shall submit those draft regulatory technical standards to the Commission by-*… [18 months after intro into force of this amending 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.

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.

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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.

12. EBA shall develop draft regulatory technical standards to specify what constitutes an "equivalent legal mechanism in place to ensure that the property under construction is completed within a reasonable time frame", in accordance with Article 124(3)(a)(iii).

EBA shall submit those draft regulatory technical standards to the Commission by … [1 year after entry into force of this amending 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.';

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(57) Article 125 is replaced by the following:

‘Article 125

Exposures secured by mortgages on residential ~~–~~ property

1. An exposure secured by a residential property ***as referred to*** in Article 124(2) ~~–~~ point (a)***(i)*** ***or*** (***a***)***(ii)*** shall be treated as follows:

(a) the part of the exposure up to 55 % of the property value ~~–~~ shall be assigned a risk weight of 20 %.

Where an institution holds a junior lien and there are more senior liens not held by that institution, to determine the part of the institution’s exposure that is eligible for the 20 % risk weight, the amount of 55 % of the property value shall be reduced by the amount of the more senior liens not held by the institution.

Where liens not held by the institution rank pari passu with the institution’s lien, to determine the part of the institution’s exposure that is eligible for the 20 % risk weight, the amount of 55 % of the property value, reduced by the amount of any more senior liens both held by the institution and not held by the institution shall be reduced by the product of:

(i) 55 % of the property value, reduced by the amount of any more senior liens (if any, both held by the institution and held by other institutions); and

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(ii) the amount of liens not held by the institution that rank pari passu with the institution's lien divided by the sum of all pari passu liens.

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 ***risk-weighted*** as an exposure ***to the counterparty*** that is not secured by residential property.

2. An exposure ***as referred to in Article 124(2***), point (a)***(iii)***, shall be assigned ~~–~~ the risk weight set in accordance with the ***respective ETV-risk weight bucket of the*** following Table 6aaa~~–~~***.***

For the purposes of this paragraph, where, in accordance with Article 124(7), the competent or designated authority, as applicable, has set a higher risk weight or a lower ETV percentage than those referred to in this paragraph, institutions shall use the risk weight ***and percentage*** set in accordance with Article 124(7)***.***

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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 ***competent authority of that Member State has published in accordance with Article 430a(3)*** loss rates for such exposures ***which, based on the aggregate data reported by institutions in*** that Member State ***for that national immovable property market,*** do not exceed any of the following limits for losses aggregated across ▌such exposures existing in the previous year:

(a) ***the aggregated amount reported by institutions under Article 430a(1), point (a), divided by the aggregated amount reported by institutions under Article 430a(1), point (c), does not exceed 0,3 %;***

(b) the aggregated amount reported by institutions under Article 430a(1), point (b), divided by the aggregated amount reported by institutions under Article 430a(1), point (c), does not exceed 0,5 %.

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2a. Institutions may apply the derogation referred to in the third subparagraph of paragraph 2 also in cases where competent authorities of a third country which apply supervisory and regulatory arrangements at least equivalent to those applied in the Union as decided in accordance with Article 107(4), publish corresponding loss rates for exposures secured by residential property situated within the territory of their country.

Where a competent authority of a third country does not publish corresponding loss rates for exposures secured by residential property situated within the territory of that third country, EBA may publish such information for a third country, provided that valid statistical data, that is statistically representative of the corresponding residential real estate market, is available.';

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(58) Article 126 is replaced by the following:

‘Article 126

Exposures secured by mortgages on commercial immovable property

1. An exposure secured by a commercial immovable property as referred to in Article 124(2), point (b)(i) shall be treated as follows:

(a) the part of the ***exposure*** up to 55 % of the property value ***shall be assigned a risk weight of 60 %***

Where an institution holds a junior lien and there are more senior liens not held by that institution, to determine the part of the institution’s exposure that is eligible for the 60 % risk weight, the amount of 55 % of the property value shall be reduced by the amount of the more senior liens not held by the institution.

Where liens not held by the institution rank pari passu with the institution’s lien, to determine the part of the institution’s exposure that is eligible for the 60 % risk weight, the amount of 55 % of the property value, reduced by the amount of any more senior liens both held by the institution and not held by the institution shall be reduced by the product of:

(i) 55 % of the property value, reduced by the amount of any more senior liens (if any, both held by the institution and held by other institutions); and

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(ii) the amount of liens not held by the institution that rank pari passu with the institution's lien divided by the sum of all pari passu liens.

For the purposes of this point, where, in accordance with Article 124(7), the competent or designated authority, as applicable, has set ***higher risk weights or*** a lower percentage of the property value than ***those*** referred to in this point, institutions shall use the ***risk weights and*** percentage set in accordance with Article 124(7)**.**

(b) the remaining part of the exposure, if any, shall be ***risk-weighted*** as an exposure ***to the counterparty*** that is not secured by ***commercial*** immovable property.

EBA shall assess the appropriateness of adjusting the treatment of exposures secured by mortgages on commercial immovable property, including IPRE and non-IPRE exposures, taking into account the appropriateness of risk weights and the relative differences in risk of exposures secured by residential property, the differences in risk sensitivity of IPRE exposures secured by residential property laid down in Table 6aaa and IPRE exposures secured by commercial immovable property laid down in Table 6c and the recommendations of the ESRB on the vulnerabilities in the commercial real estate sector in the EU (ESRB/2022/9) and report to the Commission by 31 December 2027.

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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 2028.

2. An exposure as referred to in Article 124(2), point (***b***)(ii) shall be assigned the ***risk*** weight set in accordance with ***the respective ETV-risk weight bucket of*** Table 6c ***.***

For the ***purposes of this paragraph, where, in accordance with Article 124(7), the competent or designated authority, as applicable, has set a higher risk weight or a lower ETV percentage than those referred to in this paragraph, institutions shall use the risk weight and percentage*** set in accordance with Article 124(7)***.***

Table 6c

	ETV ≤ 60 %	60 % < ETV ≤ 80 %	ETV > 80 %
Risk weight	70 %	90 %	110 %

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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 commercial ***immovable*** property which is situated within the territory of a Member State, where the ***competent authority of that Member State has published in accordance with Article 430a(3)*** loss rates for such exposures ***which, based on the aggregate data reported by institutions in*** that Member State ***for that national immovable property market,*** do not exceed any of the following limits for losses aggregated across such exposures existing in the previous year:

(a) ***the aggregated amount reported by institutions under Article 430a(1), point (d), divided by the aggregated amount reported by institutions under Article 430a(1), point (f), does not exceed 0,3 %.***

(b) the aggregated amount reported by institutions under Article 430a(1), point (e), divided by the aggregated amount reported by institutions under Article 430a(1), point (f), does not exceed 0,5 %.

2a. Institutions may apply the derogation referred to in the third subparagraph of paragraph 2 also in cases where competent authorities of a third country which apply supervisory and regulatory arrangements at least equivalent to those applied in the Union as decided in accordance with Article 107(4), publish corresponding loss rates for exposures secured by commercial immovable property situated within the territory of their country.

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Where a competent authority of a third country does not publish corresponding loss rates for exposures secured by commercial immovable property situated within the territory of that third country, EBA may publish such information for a third country, provided that valid statistical data, that is statistically representative of the corresponding commercial real estate market, is available.';

(59) 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, ▌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-***saleor*** 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 ***or where the financing is ensured in an equivalent manner, or legally binding sale or lease contracts, including where the payment is made by instalments as the construction works progress***, amount to a significant portion of total contracts;

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(b) the obligor has substantial equity at risk, which is represented as an appropriate amount of obligor-contributed equity to the residential property value upon completion.

3. EBA shall by … [1 year after entry into force] issue guidelines specifying the terms "substantial cash deposits", ***"financing ensured in an equivalent manner"***, "appropriate amount of obligor-contributed equity", ***and*** "significant portion of total contracts", ***taking into account the specificities of institutions' lending to public housing or not-for profit entities across the Union that are regulated by law and that exist to serve social purposes and to offer tenants long-term housing.***

Those guidelines shall be adopted in accordance with Article 16 of Regulation (EU) No 1093/2010.';

(60) Article 127 is amended as follows:

(a) in paragraph (1), the following subparagraph is added:

'For the purposes of calculating the specific credit risk adjustments referred to in this paragraph ***for an exposure that is purchased when already in default***, institutions shall include in the calculation any positive difference between the amount owed by the obligor on ***that*** exposure and the sum of:

(i) the additional own funds reduction if ***that*** exposure ***were*** written off fully; and

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(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;

(61) 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 ***ordinary unsecured creditors***;

(b) own funds instruments to the extent that those instruments are not considered as equity exposures in accordance with Article 133(1); and

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(c) ***exposures arising from the institution's holding of eligible*** 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 ~~–~~ deducted ***from own funds or subject to the treatment set out in Article 72e(5), first subparagraph***.';

(62) ***Article 129 is amended as follows:***

(a) in paragraph 1, point (c), the following subparagraph is added:

'Without prejudice to the first subparagraph of this point, until 1 July 2027, indirect exposures to credit institutions without an external rating that guarantee mortgages loans until their registration shall be treated for the purposes of this point as exposures to credit institutions that qualify for credit quality step 1, provided they are short-term exposures assigned to grade A under Article 121 and that the guaranteed mortgage loans will, once registered, be eligible as per points from (d) to (f) of this first paragraph.';

(b) in paragraph 3, the following subparagraph is added:

'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 ***229(1***), point (***d);';***

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(c) in paragraph 4, subparagraph 1 is replaced by the following:

'4. Covered bonds for which a directly applicable credit assessment by a nominated ECAI is available shall be assigned a risk weight in accordance with Table 6a which corresponds to the credit assessment of the ECAI in accordance with Article 136.';

(d) paragraph 5 is replaced by the following:

'5. Covered bonds for which a directly applicable credit assessment by a nominated ECAI is not available shall be assigned a risk weight on the basis of the risk weight assigned to senior unsecured exposures to the institution which issues them. The following correspondence between risk weights shall apply:

(a) if the exposures to the institution are assigned a risk weight of 20 %, the covered bond shall be assigned a risk weight of 10 %;

(aa) if the exposures to the institution are assigned a risk weight of 30 %, the covered bond shall be assigned a risk weight of 15 %;

(ab) if the exposures to the institution are assigned a risk weight of 40 %, the covered bond shall be assigned a risk weight of 20 %;

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(b) if the exposures to the institution are assigned a risk weight of 50 %, the covered bond shall be assigned a risk weight of 25 %;

(ba) if the exposures to the institution are assigned a risk weight of 75 %, the covered bond shall be assigned a risk weight of 35 %;

(c) if the exposures to the institution are assigned a risk weight of 100 %, the covered bond shall be assigned a risk weight of 50 %;

(d) if the exposures to the institution are assigned a risk weight of 150 %, the covered bond shall be assigned a risk weight of 100 %.';

***(63) in Article** 132a(3), the first subparagraph is replaced by the following:*

'By way of derogation from point (d) of Article 92(4), institutions that calculate the risk-weighted exposure amount of a CIU's exposures in accordance with paragraph 1 or 2 of this Article may calculate the own funds requirement for the credit valuation adjustment risk of derivative exposures of that CIU as an amount equal to 50 % of the own funds requirement for those derivative exposures calculated in accordance with Section 3, 4 or 5 of Chapter 6 of this Title, as applicable.';

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(64) in Article 132c(2), subparagraph 1 is replaced by the following:

'Institutions shall calculate the exposure value of a minimum value commitment that meets the conditions set out in paragraph 3 of this Article as the discounted present value of the guaranteed amount using a discount factor that is derived from a risk-free rate pursuant to Article 325l, paragraph 2 or 3, as applicable. Institutions may reduce the exposure value of the minimum value commitment by any losses recognised with respect to the minimum value commitment under the applicable accounting standard.';

▌

(65) 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;

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(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;

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– 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.

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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.

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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, 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***, up to the part of such equity exposures that in aggregate does not exceed 10 % of the institutions' own funds,*** that comply with all of the following conditions:

(a) the legislative programs provide significant subsidies ***or guarantees***, including by multilateral development banks, public development credit institutions as defined ***in*** Article 429a(2) or international organisations, for the investment to the institution;

(b) the legislative programs involve some form of government oversight;

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(c) ***the legislative programmes involve restrictions on the equity investment, such as limitations on the size and types of businesses in which the institution is investing, on allowable amounts of ownership interests, on the geographical location and on other relevant factors that limit the potential risk of the investment for the investing institution;***

6. Equity exposures to central banks shall be assigned a risk weight of ***0*** %.

7. ***An equity holding*** that ***is*** recorded as a loan but ***that has arisen*** 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 ***if*** the equity ***holding were treated as a*** debt ***exposure***;';

(66) 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.'***;***

▌

(67) in Article 135, the following paragraph ▌ is added:

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‘*3a*. ▌–ESMA shall by … [▌– 1 year after entry into force ***of this amending Regulation***] prepare a report on ***whether ESG risks are appropriately reflected in ECAI credit risk rating methodologies.***

Based on this report and if appropriate, the Commission shall submit a legislative proposal to the European Parliament and the Council by … [18 months after entry into force of this amending Regulation].’;

(68) Article 138 is amended as follow:

(a) the following point (g) is added:

~~‘(g)~~ ~~**for exposures to institutions,** an institution shall not use an ECAI credit assessment 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.

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Implicit government support means that the central government, regional government or local authority ***would*** act to prevent creditors of the institution from incurring losses in the event of the institution's default or distress.';

(69) 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 ***if*** the exposure ***were*** 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 ***than would be the case if the exposure were treated as unrated*** 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.';

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(70) 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.’;

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(71) 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) ***or*** (g);

(1c) “corporate exposure” means ***an*** exposure assigned to any of the exposure classes referred to in Article 147(2), points (***c***)(i), (***c***)(ii) ***or*** (***c***)(iii);

(1e) “retail exposure” means ***an*** exposure assigned to ***any of*** the exposure classes referred to in Article 147(2), points (d)(i), (d)(ii), (d)(iii) ***or*** (d)(iv);

(1d) “regional governments and local authorities and public sector entities exposure” or “RGLA-PSE exposure” means an exposure assigned to any of the exposure classes referred to in Article 147(2), points (a1)(i) or (a1)(ii);’;

(b) point (2) is replaced by the following:

‘(2) “type of exposures” means a group of homogeneously managed exposures, 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;’;

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(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);’;

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(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.-***In making the assessment for the sales threshold, the amounts must be as reported in the audited financial statements of the corporates or, for corporates that are part of consolidated groups, their consolidated groups according to the accounting standard applicable to the ultimate parent of the consolidated group. The figures must be based on the average amounts calculated over the prior three years, or on the latest amounts updated every three years by the institution.***’;

(e) the following points (8) to (12) are added:

‘(8) “PD/LGD modelling adjustment approach” ***means*** an adjustment of the LGD or modelling an adjustment of both the PD and the LGD of the underlying exposure ~~;~~;

(9) “protection-provider-RW-floor” refers to the risk weight applicable to a comparable, direct exposure to the protection provider;

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(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.';

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(72) 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.

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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 ***supplement this Regulation by adopting*** the regulatory technical standards referred to the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.';

(73) 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 ***whethereach*** rating system ***is*** suited to the range of application of ***that*** rating system, and has made necessary changes to ***each*** rating ***system*** 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;';

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(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 ***... [24 months after entry into force of this amending 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.’;

(74) 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 ***governments*** and local authorities and to public sector entities (“RGLA-PSE”), ***to*** be divided into the following exposure classes:

(i) exposures to regional ***governments*** and local authorities (“RGLAs”);

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(ii) exposures to public sector entities ("PSEs");

(b) exposures to institutions;

(c) exposures to corporates, ***to*** be divided into the following exposure classes:

(i) general corporates;

(ii) specialised lending ("SL") exposures;

(iii) corporate purchased receivables;

(d) retail exposures, ***to*** 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.***';***

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(b) in paragraph 3, point (a) is deleted;

(c) the following paragraph 3a is inserted:

‘3a. ***By way of derogation from paragraph 2, exposures*** to regional governments, local authorities or public sector entities shall ~~be~~ be assigned to the exposure class referred to in paragraph 2, point (a) ~~where~~ ***where those*** exposures ***are treated as exposures to central governments according to*** 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 ***referred to in Article 4(1), point (75d),*** up to the property value does not, to the knowledge of the institution, ~~which~~ which shall take reasonable steps to verify the amount of that exposure***, exceed EUR 1 million***;

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(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) point (c) is replaced by the following:

'(c) they are not managed just as individually as exposures in the exposure classes referred to in Article 147(2), points (c)(i), (c)(ii) and (c)(iii);';

(***iii***) 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).

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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 ***one of*** the ▌exposure ***classes referred to in Article 147(2), points (c)(i), (c)(ii) and (c)***(iii)***;';***

(iv) the following paragraph 5a is inserted:

'5a. Retail exposures belonging to a type of exposures meeting all the following conditions ***shall*** be assigned to the QRRE exposure class:

(a) the exposures of that type of exposures are to ***one or more natural persons***;

(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 ***in*** that type of exposure to a single ***natural person*** 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;

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(e) the treatment ***of exposures assigned to that type of exposures*** as a qualifying revolving retail exposure is consistent with the underlying risk characteristics of ***that*** type of exposures~~.~~.

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***), (e1***) and (f), shall be assigned to one of the exposure classes referred to in point (c) of that paragraph.';

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(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.

~~EBA shall submit those draft regulatory technical standards to the Commission by …*[24 after the entry into force of this amending Regulation].*~~.

Power is delegated to the Commission to ***supplement this Regulation by adopting*** the regulatory technical standards referred to in the ***third*** subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.’;

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(h) a new paragraph 11 is added:

‘11. EBA shall develop draft regulatory technical standards ***further*** specifying the conditions and criteria for assigning exposures to ***the classes referred to in paragraph 2 and, where necessary, further specifying*** those classes.

EBA shall submit those draft regulatory technical standards to the Commission by ***...]36 months after entry into force of this amending 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.’;

(75) Article 148 is amended as follows:

(a) paragraphs 1***, 2*** and ***3*** 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), and (g) of Article 147(2). Once an institution ***has implemented*** the IRB Approach for ***a certain type*** of ***exposures within an*** exposure ***class***, 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.

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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 ***a certain*** exposure class ~~–~~within the same business unit~~–~~ and across different business units in the same group, ~~–~~for the use of own estimates of LGDs or ***the use of*** 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 ***a certain*** exposure class across different ***types of exposures within the same business unit and across different*** business units in the same group~~–~~***,*** for the use of own estimates of LGDs or ***the use of*** IRB-***CCF***. 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.

3. Institutions shall carry out implementation of the IRB Approach in accordance with conditions determined by the competent authorities. The competent authority shall design those conditions in a way that they ensure that the flexibility under paragraph 1 is not used selectively for the purpose of achieving reduced own funds requirements in respect of those types of exposures or business units that are yet to be included in the IRB Approach or in the use of own estimates of LGDs or the use of IRB-CCF.';

(b) paragraphs 4, 5 and 6 are deleted;

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(76) in Article 149(1), point (a) is replaced by the following:

'(a) the institution has demonstrated to the satisfaction of the competent authority that the use of the Standardised Approach is not made with a view to engage in regulatory arbitrage, including by unduly reducing the own funds requirements of the institution, is necessary on the basis of nature and complexity of the institution's total exposures of this type and would not have a material adverse impact on the solvency of the institution or its ability to manage risk effectively;';

(77) 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 ***or belonging to types of*** exposures ***within an exposure class,*** 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.

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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, including exposures of foreign branches and different product groups, where those types of exposures are immaterial in terms of size and perceived risk profile.***

In addition to the exposures referred to in the second subparagraph, an institution may, subject to the competent authority's prior permission, apply the Standardised Approach for ***the following*** exposures ***where the IRB Approach is applied for other types of exposures*** within ***the respective*** exposure class~~.~~***:***

(a) exposures to central governments and central banks of the Member States and their regional governments, local authorities, and public sector entities provided that:

(i) there is no difference in risk between the exposures to that central government and central bank and those other exposures because of specific public arrangements; and

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

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(b) exposures of an institution to a counterparty which is its parent undertaking, its subsidiary or a subsidiary of its parent undertaking provided that the counterparty is an institution or a financial holding company, mixed financial holding company, financial institution, asset management company or ancillary services undertaking subject to appropriate prudential requirements or an undertaking linked by a relationship within the meaning of Article 22(7) of Directive 2013/34/EU;

(c) exposures between institutions which meet the requirements set out in Article 113(7);

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.

In addition to the exposures referred to in the second and third subparagraph, an institution may apply the Standardised Approach for exposures to churches and religious communitieswhich meet the requirements set out in Article 115(3).';

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(b) paragraph 2 is replaced by the following:

'EBA shall, in accordance with Article 16 of Regulation (EU) No 1093/2010, issue guidelines by ...[4 years after entry into force of this amending Regulation] on what constitutes types of exposures that are immaterial in terms of size and perceived risk profile.';

(c) paragraphs 3 and 4 are deleted;

(78) Article 151 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The risk-weighted exposure amounts for credit risk for exposures belonging to one of the exposure classes referred to in Article 147(2), points (a) to (d) and point (g), shall, unless those exposures are deducted from own funds or are subject to the treatment set out in Article 72e(5), first subparagraph, be calculated in accordance with Sub-section 2.';

(b) paragraph 4 is deleted;

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(c) 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 ***other than those referred to under point (a)***;

(c) exposures to large corporates ***not assigned to the exposure class referred to in Article 147(2), point (c)(ii)***.

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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.';

(d) the following ***paragraph is*** added:

▌

'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***, unless those exposures are deducted from own funds or are subject to the treatment set out in Article 72e(5), first subparagraph***.';

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(79) Article 152, is amended as follows:

(a) in paragraph 3, the first subparagraph is replaced by the following:

'By way of derogation from point (d) of Article 92(4), institutions that calculate the risk-weighted exposure amount of the CIU in accordance with paragraph 1 or 2 of this Article may calculate the own funds requirement for credit valuation adjustment risk of derivative exposures of that CIU as an amount equal to 50 % of the own funds requirement for those derivative exposures calculated in accordance with Section 3, 4 or 5 of Chapter 6 of this Title, as applicable.';

(***b***) 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 ***for all or those parts of the underlying exposures*** 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;

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(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.';

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(80) Article 153 is amended as follows:

(a) the title of Article 153 is replaced by the following:

'Risk-weighted exposure amounts for exposures to central governments and central banks, exposures to RGLA-PSE, exposures to institutions and exposures to corporates';

(b) the introductory sentence in paragraph 1 is replaced by the following:

'Subject to the application of the specific treatments laid down in paragraphs 2, and 4, the risk-weighted exposure amounts for exposures to central governments and central banks, exposures to RGLA-PSE, exposures to institutions and exposures to corporates shall be calculated according to the following formulae:';

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(c) paragraph 1, point (iii) is replaced by the following:

‘(iii) if 0 < PD < 1, then:

$$\text{RW} = \left(\text{LGD} \cdot N\left(\frac{1}{\sqrt{1-R}} \cdot G(\text{PD}) + \sqrt{\frac{R}{1-R}} \cdot G(0{,}999)\right) - \text{LGD} \cdot \text{PD}\right) \cdot \frac{1+(\text{M}-2{,}5)\cdot b}{1-1{,}5\cdot b} \cdot 12{,}5$$

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;

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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 ***be expressed*** in years and ***determined*** in accordance with Article 162.';

(***d***) 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.***'***;

(***e***) paragraph 3 is deleted;

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(*f*) 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-***... [24 months after entry into force of this amending 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.***’;***

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(81) Article 154 is amended as follows:

(a) in paragraph 1, point (ii) is replaced by the following:

‘(ii) if PD < 1, then:

$$\text{RW} = \left(\text{LGD} \cdot N\left(\frac{1}{\sqrt{1-R}} \cdot G(\text{PD}) + \sqrt{\frac{R}{1-R}} \cdot G(0{,}999) \right) - \text{LGD} \cdot \text{PD} \right) \cdot 12{,}5$$

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:

$$R = 0{,}03 \cdot \frac{1 - e^{-35 \cdot \text{PD}}}{1 - e^{-35}} + 0{,}16 \cdot \left(1 - \frac{1 - e^{-35 \cdot \text{PD}}}{1 - e^{-35}} \right)$$

’;

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(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 ***calculated for*** an exposure partly secured by residential property ***pursuant to paragraph 1, point (ii), taking into account a coefficient of correlation R as set out in the first subparagraph of this paragraph,*** shall ***be applied both to the secured and*** the unsecured portion of ***that*** exposure.’;

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(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.’;

(82) Article 155 is deleted;

(83) 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 ***credit risk mitigation*** in accordance with Article 160(4), and the conditions for the use of own estimates and fall-back parameters;

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(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-... ***[36 months after entry into force of this amending 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.';

(84) Article 158 is amended as follows:

'(a) in paragraph 5, the last subparagraph is deleted;

(b) paragraphs 7, 8 and 9 are deleted.';

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(85) 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 ***due to counterparty default*** determined in accordance with Articles 34 ~~***and***~~ related to ~~-~~ exposures ***for which the expected loss amounts are calculated in accordance with Article 158(5), (6) and (10)***;

(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”.

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For the purposes of the calculation referred to in the first ***paragraph***, institutions shall treat discounts ▌ 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▌ 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.▌***'***;

(86) 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▌**,** LGD ***and CCF*** input floors

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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 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.';

(87) in Part Three, Title II, Chapter 3, section 4, the title of sub-section 1 is replaced by the following:

'***Exposures to corporates, institutions, central governments and central banks and RGLA-PSE';***

(88) 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 ***exposure amounts*** and expected ***loss*** 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 ***value that is used for each exposure in the input of the risk weights and expected loss formulas shall not be less than the following PD input floor value: 0,05 %.';***

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(b) the following paragraph is inserted:

'1a. For exposures assigned to the exposure class 'regional governments and local authorities and to public sector entities', referred to in Article 147(2), point (a1), for the sole purposes of calculating risk- weighted exposure amounts and expected loss amounts of those exposures, the PD values used in the input of the risk weights and expected loss formulas shall not be less than the following ▌ PD input floor'–***value: 0,03%.'***;

(c) 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 both the ▌ exposure ***that is covered by the unfunded credit protection*** and for direct comparable exposures to the protection provider may recognise the unfunded credit protection in the PD in accordance with Article 183.***'***;

(d) paragraph 5 is deleted;

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(e) 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.’;

(f) 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).’;

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89) 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 ***eligible*** FCP to central governments and central banks~~,~~ ***, to*** financial sector entities ***and to RGLA-PSE***: 45 %;’;

(ii) the following point (aa) is inserted:

‘(aa) senior exposures without ***eligible*** 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 %.’;

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(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 ▌ exposure ***covered by an unfunded credit protection*** 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 ▌ ***exposures to*** corporates ▌ referred to in Article 147(2), ***points*** (c***)(i), (c)(ii) and (c)(iii***), for the sole purpose of calculating risk -weighted ***exposure amounts*** and expected ***loss*** amounts of those exposures, and in particular for the purposes of Article 153(1), point (iii), Article 157, Article ***158(1)***, ***(***5***)*** and ***(***10***)***, where own LGD estimates are used, the LGD values ***for each exposure*** used ***as an*** input of the risk weight and ***expected*** loss formulas shall not be less than the following LGD input floor values, and calculated in accordance with paragraph 5:

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Table 2a

LGD input floors (LGD_{floor}) for exposures belonging to the exposure class "exposures to corporates" referred to in Article 147(2), points (c)(i), (c)(ii) and (c)(iii)		
exposure without eligible FCP ($LGD_{U\text{-}floor}$)	***exposure fully secured by eligible FCP ($LGD_{S\text{-}floor}$)***	
25 %	***financial collateral***	***0 %***
	receivables	***10 %***
	residential or commercial immovable property	***10 %***
	other physical collateral	~~15%~~

';

(c) the following ***paragraphs*** are added:

'***4a. For exposures assigned to the exposure class 'exposures to regional governments and local authorities and to public sector entities, referred to in Article 147(2), point (a1), for the sole purpose of calculating risk-weighted exposure amounts and expected loss amounts of those exposures, where own LGD estimates are used, the LGD values used as an input of the risk weight and expected loss formulas for exposures without eligible FCP shall not be less than the following LGD input floor value: 5%.***

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5. For the purposes of paragraph 4, the LGD input floors in Table 2a in that paragraph for exposures fully secured with ***eligible funded credit protection*** shall apply when the value of the ***funded credit protection***, 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.

For the purposes of paragraph 4 and for the purposes of the application of the relevant related adjustments, Hc and Hfx, in accordance with Article 230, funded credit protection shall be ▌ 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 ***2a***;

E , E_S , E_U and H_E are determined as specified in Article 230.

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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 ***funded credit proteciton*** securing one of the exposures of that type of exposures in the own LGD estimates ***due to lack of data on recoveries for that funded credit protecition***, 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 ***for unsecured exposures***. In that case, the ***funded credit protection*** 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 ***loss*** data excluding any recoveries arising from that ***funded credit protection***.';

(90) 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 ***applied consistently and, either be set at*** 2,5 years, except for exposures arising from securities financing transactions, for which M shall be 0,5 years ***or, alternatively, be calculated in accordance with*** paragraph 2.';

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(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(2***) 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;

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(db) for a master netting agreement including more than one ***of the*** 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) ***applicable*** 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;';

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(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 ***point (iii) of*** 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 ***contractual*** 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:’;

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(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, ***as referred to in Article 4(1), point (80) and*** corporate purchased receivables, ***provided that the respective exposures have*** a residual maturity of up to ***one*** year ;’;

– the following point (e) is added:

‘(e) issued as well as confirmed letters of credit that are short term that is ***they have*** 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 ***as defined in Article 142 (5a)***, institutions may choose to set for all such exposures M as set out in paragraph 1 instead of applying paragraph 2.’;

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(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.’;

(91) Article 163 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. For the sole purposes of calculating risk -weighted ***exposure amounts*** and expected ***loss*** amounts of those exposures, and in particular for the purposes of Article 154, Article 157 and Article ***158(1)***, ***(***5***)*** and ***(***10***)***, the PD ***for each exposure that is*** used in the input of the risk weight and expected loss formulas shall ▌ be ***the higher of the one-year PD associated with the internal borrower grade or pool to which the retail exposure is assigned and*** the following ***PD input floor values***:

(a) 0,1 % for QRRE revolvers;

(b) 0,05 % for retail exposures which are not QRRE revolvers.’;

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(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.’;

(92) 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.

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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 ***exposure amounts*** and expected ***loss*** amounts for retail exposures, and in particular pursuant to Article 154(1), ***point (ii), Article*** 157, ***and*** Article 158, paragraphs 1***, 5*** and 10, the LGD ***for each exposure*** 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 ***of this Article***:

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Table 2aa

~~LGD input floors (LGD_{floor}) for retail exposures~~			
~~exposure without FCP ($LGD_{U\text{-}floor}$)~~		~~exposure secured with FCP ($LGD_{S\text{-}floor}$)~~	
~~Retail exposure secured by residential property~~	~~N/A~~	~~Retail exposure secured by residential property~~	~~5 %~~
~~QRRE~~	~~50 %~~	~~QRRE~~	~~N/A~~
~~Other retail exposure~~	~~30 %~~	~~Other retail exposure secured with financial collateral~~	~~0 %~~
		~~Other retail exposure secured with receivables~~	~~10 %~~
		~~Other retail exposure secured with residential or commercial immovable property~~	~~10 %~~
		~~Other retail exposure secured with other physical collateral~~	~~15 %~~

’;

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(d) the following ***paragraph*** 4a ***is*** 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 ***exposure*** value of the underlying exposure;

For the purpose of the application of the relevant related adjustments, Hc and Hfx, in accordance with Article 230, FCP shall be eligible pursuant to this Chapter.

(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.

’;

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(e) paragraphs 6 and 7 are replaced by the following:

‘6. Based on the data collected under Article 430a and on any other relevant indicators, and taking into account forward-looking immovable property market developments the authority designated in accordance with paragraph 5 of this Article shall periodically, and at least annually, assess whether the LGD input floor values referred to in paragraph 4 of this Article, are appropriate for retail exposures secured by residential property or other retail exposures secured with residential or commercial immovable property located in one or more parts of the territory of the Member State of the relevant authority.

Where, on the basis of the assessment referred to in the first subparagraph of this paragraph, the authority designated in accordance with paragraph 5 concludes that the LGD input floor values referred to in paragraph 4 are not adequate, and if it considers that the inadequacy of LGD input floor values could adversely affect current or future financial stability in its Member State, it may set higher LGD input floor values for those exposures located in one or more parts of the territory of the Member State of the relevant authority. Those higher LGD input floor values may also be applied at the level of one or more property segments of such exposures.

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The authority designated in accordance with paragraph 5 shall notify EBA and the ESRB before making the decision referred to in 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 those LGD input floor values.

7. Where the authority designated in accordance with paragraph 5 sets higher LGD input floor values pursuant to paragraph 6, institutions shall have a six-month transitional period to apply them.'***;***

(93) Part Three, Title II, Chapter 3, Section 4, Sub-Section 3 is deleted;

(94) 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~~:~~ IRB-CCF or SA-CCF, in accordance with paragraphs 8a and 8b and Article 151(8).

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Where ***only*** 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 ***has*** not ***received permission to*** use IRB-CCF, shall calculate the exposure value as the committed but undrawn amount multiplied by the SA-CCF concerned.

An institution that ***uses*** 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 ***an institution has not received permission to use*** IRB-CCF[redacted], 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 [redacted] committed ***but undrawn amount***, 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.

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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.

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8c. ***Where the IRB-CCF are used for*** the sole purposes of calculating risk **-** weighted ***exposure amounts*** and expected ***loss*** amounts of exposures arising from revolving commitments ***other than exposures assigned to the exposure class in accordance with Article 147(2), point (a)***, in particular pursuant to Article 153(1), Article 157, Article 158 paragraph 1, 5 and 10, the exposure value ***for each exposure*** used as input in the risk **-**weighted exposure amount and ***expected*** loss formulas shall not be less ***than*** 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;

(95) Article 167 is deleted;

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(96) 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.’;

(97) 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 ***funded or unfunded credit protection***;’;

(98) in Article 171, the following paragraph 3 is added:

‘3. ***Institutions shall use a longer than one year time horizon in assigning ratings. An obligor rating must represent the institution’s assessment of the obligor’s ability and willingness to contractually perform despite adverse economic conditions or the occurrence of unexpected events.*** Rating systems shall be designed in such a way that idiosyncratic ***and, where those are material drivers of risk for the type of exposure,*** industry-specific changes are a driver of migrations from one grade ***or pool*** to another[redacted], ***and*** business ***cycle*** effects ***may also*** be[redacted] a driver.’;

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(99) in Article 172, paragraph 1 is amended as follows:

(a) the introductory sentence is replaced by the following:

‘For exposures to ▌ central governments and central banks, ***exposures to RGLA-PSE, exposures to institutions and exposures to corporates, the*** 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.

For the purposes of Chapter 6, transactions with counterparties where specific wrong way risk has been identified shall be treated differently when calculating their exposure value;’;

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(100) Article 173 is amended as follows:

(a) in paragraph 1, the introductory sentence is replaced by the following:

‘For exposures to ~~–~~ central governments and central banks, ***exposures to RGLA-PSE, exposures to institutions and exposures to corporates, the*** 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 ~~-~~***... [24 months after entry into force of this amending 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.’;

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(101) Article 174 is amended as follows:

(a) the introductory sentence is replaced by the following:

‘Institutions shall use statistical ***or*** other mathematical methods (‘models’) to assign exposures to obligors or ***facility*** grades or pools~~—~~***.***

Those models shall fulfil the following requirements~~—~~:’;

(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.’;

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(102) Article 176 is amended as follows:

(a) in paragraph 2, the introductory sentence is replaced by the following:

'For exposures to central governments, central banks***, RGLA-PSE, institutions and corporates***, institutions shall collect and store:';

(b) paragraph 3 is replaced by the following:

'3. For exposures for which this Chapter allows the ***use*** of own estimates of LGDs or ***the use of*** 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).';

(103) Article 177 is amended as follows:

(a) the following ***paragraph is inserted***:

'2a. The scenarios used under paragraph 2 shall also include ESG risk factors, in particular physical and transition risks stemming from climate change.

EBA shall issue guidelines on the application of paragraph 2 and 2a. Those guidelines shall be adopted in accordance with Article 16 of Regulation (EU) No 1093/2010.';

(b) paragraph 3 is deleted;

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(104) Article 178 is amended as follows:

(a) the title is replaced by the following:

‘Default of an obligor or ***credit*** 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 ***forbearance measure as referred to in Article 47b*** of the credit obligation where ***that measure*** is likely to result in a diminished financial obligation due to the material forgiveness, or postponement, of principal, interest or, where relevant, fees~~.~~’***;***

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(d) in paragraph 7, the following subparagraph is added:

'By [12 months after the date of entry into force of this amending Regulation] EBA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, to update the guidelines referred to in the first subparagraph. In particular, that update shall take into due account the necessity to encourage institutions to engage in proactive, preventive and meaningful debt restructuring *to support obligors.*

In developing those guidelines, the EBA shall duly consider the need for granting a sufficient flexibility to institutions when specifying what constitutes a diminished financial obligation for the purposes of point (d) of paragraph 3.

Those guidelines shall be *adopted* in *accordance with* Article *16 of Regulation (EU) No 1093/2010.*';

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(105) in Article 179(1), point (f) is replaced by the following :

‘***(f) to overcome biases, an institution shall include appropriate adjustments in its estimates to the extent possible. It shall add to its estimates a sufficient margin of conservatism that is related to the expected range of estimation errors after including appropriate adjustments in its estimates. Where methods and data are considered to be less satisfactory, the expected range of errors is larger, and the margin of conservatism shall be larger.’;***

(106) 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 ~~-~~ central governments and central banks***, exposures to RGLA-PSE, exposures to institutions and exposures to corporates***:’;

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(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 ***an arithmetic*** average based on number of obligors (count weighted) and other approaches, including exposure-weighted averages, shall not be permitted.’;

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(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 ***of the economic cycle*** 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 ***to use IRB-CCF,*** 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 ***at least*** 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;’;

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(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 (a), the PD shall be based on the observed historical average one-year default rate.***

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. ▌ 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 ***at least*** 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 ***...[24 months after entry into force of this amending 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.’;

(***107)*** ***in*** Article ***180(1), point (e) is replaced by the following :***

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'(e) to the extent that an institution uses data on internal default experience for the estimation of PDs, the estimates shall be reflective of current underwriting standards and of any differences in the rating system that generated the data and the current rating system. Where underwriting standards or rating systems have changed, after including an appropriate adjustment, the institution shall add a greater margin of conservatism in its estimate of PD related to the expected range of estimation errors that is not already covered by the appropriate adjustment;';

(108) ***Article*** 181 is amended as follows:

(a) paragraph 1 is amended as follows:

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(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.;

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(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***, Sub-Section 1***;

(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;';

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(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 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.’;

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b) paragraph 2 is amended as follows:

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

'(b) reflect future drawings either in their conversion factors or in their LGD estimates. In case institutions include future additional drawings in their conversion factors, these should be taken into account in the LGD in both numerator and denominator. In case institutions do not include future additional drawings in their conversion factors, these should be taken into account in the LGD numerator only;';

(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 ***at least*** five years.';

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(c) the following ***paragraphs are*** 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;

4a. For the purpose of calculating loss in accordance with point 2 of Article 5 , EBA shall issue updated guidelines by 31 December 2025, in accordance with Article 16 of Regulation (EU) No 1093/2010:

(a) with regard to cases that return to non-default status, specifying how artificial cash flow is to be treated and whether it is more appropriate for institutions to discount the artificial cash flow over the actual period of default.’

(b) assessing whether the calibration and application of the discount rate is appropriate for the calculation of economic loss across all exposures.’;

(109) Article 182 is amended as follows:

(a) ▌paragraph 1 is amended as follows:

(-i) point (a) is replaced by the following:

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'(a) institutions shall estimate conversion factors by facility grade or pool on the basis of the average realised conversion factors by facility grade or pool using the default weighted average resulting from all observed defaults within the data sources. Where institutions observe negative realised conversion factor on their default observations, the realised conversion factor on these observations shall be equal to zero for the purpose of quantification of their IRB-CCF estimates. Institutions may use the information of the negative realised conversion factor in the process of model development for the purpose of risk differentiation.';

(i) point (c) is replaced by the following:

'(c) institutions' IRB-CCF shall reflect the possibility of additional drawings by the obligor up to ***and after*** the time a default event is triggered.';

(ii) the following points (g) and (h) are added:

'(g) institutions' IRB-CCF shall be ***estimated*** using a 12-month fixed-horizon approach;

(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.';

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(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), ▌ each ▌ default▌ shall be linked to relevant obligor and facility characteristics at ***the*** fixed reference date ***defined*** as 12 months prior to ***the date of*** default▌.

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 ***materially*** different risk characteristics. IRB-CCF shall be based on appropriately homogenous segments. For that purpose, the following practices shall not be allowed ***or would request a detailed scrutiny and justification***:

(a) SME/mid-market underlying data being applied to ***large*** corporate obligors;

(b) data from commitments with ‘small’ unused limit availability being applied to facilities with ‘large’ unused limit availability;

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(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 ***adjusted*** 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 ***or caps*** to CCF or exposure values observations***, with the exception of the realised conversion factor equal to zero , in accordance with Article 182(1), point (a);***

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(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) the following paragraphs are inserted:

'1a. Institutions shall ensure that their CCF estimates are effectively quarantined from the potential effects of region of instability caused by a facility being close to being fully drawn at reference date.

1b. Reference data must not be capped at the principal amount outstanding of a facility or the available facility limit. Accrued interest, other due payments and drawings in excess of facility limits must be included in the reference data.';

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(c) the following paragraph 5 is added:

‘5. ***By 31 December 2026,*** 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.’;

(110) 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 central governments and central banks***, exposures to RGLA-PSE, exposures to corporates*** 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;

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(ii) the following ***point*** (d) ***is*** added:

‘(d) the guarantee shall be unconditional.’;

(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 ***pursuant to*** the ***qualifying default of the obligor or to the non-payment by*** the original obligor. 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.

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.’;

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(c) the following paragraph 1a is added:

‘1a. Institutions may recognise unfunded credit protection by using either the PD/LGD modelling ***adjustment*** 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) in paragraph 3, the following subgraph is added:

‘***First-to-default credit derivatives may be recognised as eligible unfunded credit protection. However second-to-default and all other nth-to-default credit derivatives shall not be recognised as eligible unfunded credit protection.***’;

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(e) paragraph 4 is replaced by the following:

‘4. Where institutions recognise unfunded credit protection by the PD/LGD modelling ***adjustment*** 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.’;

(f) paragraph 6 is deleted;

(111) in Part Three, Title II, Chapter 3, Section 6, Sub-Section 4 is deleted;

(112) in Article 192, the following ***point is*** added:

▌

‘(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.’;

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(113) in Article 193, the following paragraph 7 is added:

‘7. Collateral that satisfies all eligibility requirements set out in this Chapter can be recognised ▌ 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▌.’;

(114) in Article 194, paragraph 10 is deleted;

(115) 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 ***where***:

– ***the ECAI or export credit agency*** has been recognised as being eligible for the purposes of Chapter 2; ***and***

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– ***the credit assessment*** 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;

(~~i~~***ii***) those debt securities have a credit assessment carried out by an ECAI ***where***:

– ***the ECAI*** has been recognised as being eligible for the purposes of Chapter 2; ***and***

– ***the credit assessment*** 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;

(d) debt securities satisfying all of the following conditions:

(i) those debt securities are issued by other entities;

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(ii) those debt securities have a credit assessment carried out by an ECAI ***where***:

– the ECAI has been recognised as being eligible for the purposes of Chapter 2; ***and***

– the ***credit assessment*** 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;

(e) debt securities having a short-term credit assessment carried out by an ECAI ***where***:

(i) the ECAI has been recognised as being eligible for the purposes of Chapter 2; and

(ii) the ***credit assessment*** 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;***';***

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(116) in Article 197(6), subparagraph 1 is replaced by the following:

'For the purposes of paragraph 5, where a CIU ("the original CIU") or any of its underlying CIUs are not limited to investing in instruments that are eligible under paragraphs 1 and 4:

– *where the institutions would apply the look-through approach, for direct exposures to the CIUs, as referred to in Article 132a(1) or 152(2), they may use units or shares in that CIU as collateral up to the amount equal to the value of the instruments held by the CIU, that are eligible under paragraphs 1 and 4;*

– *where institutions would apply the mandate-based approach, for direct exposures to the CIUs, as referred to in Article 132a(2) or 152(5), they may use units or shares in that CIU as collateral up to an amount equal to the value of the instruments held by that CIU that are eligible under paragraphs 1 and 4 under the assumption that that CIU or any of its underlying CIUs have invested in non-eligible instruments to the maximum extent allowed under their respective mandates.';*

(117) in Article 198, paragraph 2 is replaced by the following:

'2. Where the CIU or any underlying CIU are not limited to investing in instruments that are eligible for recognition under Article 197(1) and (4) and the items referred to in point (a) of paragraph 1 of this Article,

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– ***where institutions would apply the look-through approach, for direct exposures to the CIUs, as referred to in Article 132a(1) or 152(2),***

they may use units or shares in that CIU as collateral up to the amount equal to the value of the instruments held by the CIU, that are eligible under paragraphs 1 and 4 of Article 197 and the items referred to in point (a) of paragraph 1 of this Article;

– ***where institutions would apply the mandate-based approach, for direct exposures to the CIUs, as referred to in Article 132a(2) or 152(5),***

they may use units or shares in that CIU as collateral up to an amount equal to the value of the instruments held by that CIU that are eligible under paragraphs 1 and 4 of Article 197 and the items referred to in point (a) of this Article under the assumption that that CIU or any of its underlying CIUs have invested in non-eligible instruments to the maximum extent allowed under their respective mandates.

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Where non-eligible instruments can have a negative value due to liabilities or contingent liabilities resulting from ownership, institutions shall do both of the following:

(a) calculate the total value of the non-eligible instruments;

(b) where the amount obtained under point (a) is negative, subtract the absolute value of that amount from the total value of the eligible instruments.';

(118) 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;

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

‘(a) ***the aggregated amount reported by institutions under Article 430a(1), point (a) divided by the aggregated amount reported by institutions under Article 430a(1), point (c) does not exceed 0,3 %;***

(b) the aggregated amount reported by institutions under Article 430a(1), point (b) divided by the aggregated amount reported by institutions under Article 430a(1), point (c) does not exceed 0,5 %.’;

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(c) in paragraph 4, ***points*** (a) ***and (b) are*** replaced by the following:

‘(a) ***the aggregated amount reported by institutions under Article 430a(1), point (d) divided by the aggregated amount reported by institutions under Article 430a(1), point (f) does not exceed 0,3 %;***

(b) the aggregated amount reported by institutions under Article 430a(1), point (e) divided by the aggregated amount reported by institutions under Article 430a(1), point (f) does not exceed 0,5 %.’;

(d) the following paragraph 4a is inserted:

‘4a. Institutions may apply the exemptions referred to in paragraphs 3 and 4 also in cases where competent authorities of a third country jurisdiction, which apply supervisory and regulatory arrangements at least equivalent to those applied in the Union, as decided in accordance with Article 107(4), publish corresponding loss rates for exposures secured by residential property or commercial immovable property situated within the territory of their country.’;

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(e) 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.’;

(f) 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.’;

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(119) 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 ***a nominated*** ECAI, including parent undertakings, subsidiaries or affiliated entities of the obligor where ***a direct exposure to*** those parent undertakings, subsidiaries or affiliated entities ***has*** a lower risk weight than ~~–~~ the ~~–~~***exposure to*** the obligor;’;

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(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 ***uses the IRB approach for exposures to*** those corporate entities [redacted].';

(120) Article 202 is deleted;

(121) 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.';

[redacted]

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(122) in Article 207(4), point (d) is replaced by the following:

'(d) they shall calculate the market value of the collateral, and revalue it accordingly, at least once every six months and whenever they have reason to believe that a significant decrease in the market value of the collateral has occurred; ESG-related considerations shall prompt an assessment on whether a significant decrease in the market value of the collateral has occurred;';

(123) Article 208 is amended as follows:

(a) paragraph 3 is amended as follows:

(i) point (b) ***is replaced by*** the following:

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(b) the property valuation is reviewed when information available to institutions indicates that the value of the property may have declined materially relative to general market prices and that review is carried out by a valuer who possesses the necessary qualifications, ability and experience to execute a valuation and who is independent from the credit decision process. ESG-related considerations, including those related to limitations imposed by the relevant Member States' and Union legal and regulatory objectives and legal acts , as well as, where relevant for internationally active institutions, third country objectives and regulations, shall be considered an indication that the value of the property may have declined materially relative to general market prices. For loans exceeding EUR 3 million or 5 % of the own funds of an institution, the property valuation shall be reviewed by such valuer at least every three years.';

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(ii) the second subparagraph is deleted;

(b) the following paragraph 3a is inserted:

'3a. In accordance with paragraph 3 ~~–~~ ▌, institutions may carry out the ***monitoring*** of the property value ***and the identification of immovable property in need of revaluation*** by means of advanced statistical or other mathematical methods ('models'), developed independently from the credit decision process ~~-~~***and*** subject to the fulfilment of the following conditions:

(a) the institutions set out, in their policies and procedures, the criteria for using models to ▌ monitor the values of collateral ***and to identify the properties that should be revaluated***. 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;

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(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 ▌ ;

(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 ***monitoring of the value of immovable property collateral and identification of properties in need of revaluation;***

(f) the estimates of models are independently validated and the validation process is generally consistent with the principles set out in Article 185, ***where applicable***~~.~~';

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(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.

By way of derogation from Article 92(5), point (a), point (ii), and without prejudice to the derogation set out in Article 92(3), point (b), for exposures secured by immovable property granted before 1 January 2025 , institutions that apply the IRB Approach referred to in Chapter 3 by using their own estimates of loss given default (LGD), shall not be required to apply the provisions set out in the first subparagraph.’;

(124) Article 210 ***is amended as follows:***

(a) in paragraph 1, 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.’;

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(b) in Article 210, point (g) is replaced by the following:

'(g) when conducting valuation and revaluation, institutions shall take fully into account any deterioration or obsolescence of the collateral, paying particular attention to the effects of the passage of time on fashion- or date-sensitive collateral; for physical collateral, obsolescence of collateral shall also include ESG-related valuation considerations related to prohibitions or limitations imposed by the relevant Member States' and Union legal and regulatory objectives and legal acts , as well as, where relevant for internationally active institutions, third country objectives and regulations;';

(125) 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:

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(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.

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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.';

(126) 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.';

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(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 ***qualifying*** default of ~~[redacted]~~ or ***non-payment by*** the original obligor~~[redacted]~~, 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;

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(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. ***This justification shall be properly documented and subject to a dedicated internal approval and audit procedures.***';

(127) 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).**'**;

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(128) Article 217 is deleted;

(129) 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.’;

(130) Article 220 is amended as follows:

(a) the title is replaced by the following:

‘Using the Supervisory Volatility Adjustments Approach for master netting agreements’;

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(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 ***of the*** 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;’;

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(d) paragraph 3 is replaced by the following:

‘3. Institutions shall calculate E* in accordance with the following formula:

$$E^{*} = \max\left(0; \sum_{i} E_i - \sum_{j} C_j + 0{,}4 \cdot E_{\text{net}} + 0{,}6 \cdot \frac{E_{\text{gross}}}{\sqrt{N}} + \sum_{k} \left|E_k^{\text{fx}}\right| \cdot H_k^{\text{fx}}\right)$$

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;

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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;

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E_{net} = the net exposure of the agreement, calculated as follows:

$$E_{net} = \left| \sum_{l=1}^{N} |E_l^{sec}| \cdot H_l^{sec} \right|$$

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;

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(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^{sec} for which $|E_l^{\text{sec}}|$ is less than $\frac{1}{10}\max_l(|E_l^{\text{sec}}|)$ shall not be counted;

E_{gross} = the gross exposure of the agreement, calculated as follows:

$E_{\text{gross}} = \sum_{l=1}^{N}|E_l^{\text{sec}}| \cdot |H_l^{\text{sec}}|$.';

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(131) 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;

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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.

(132) in Article 222, paragraph3 is replaced by the following:

'3. Institutions shall assign to those portions of exposure values that are collateralised by the market value of eligible collateral the risk weight that they would assign under Chapter 2 where the lending institution had a direct exposure to the collateral instrument. For this purpose, the exposure value of an off-balance sheet item listed in Annex I shall be equal to 100 % of the item's value rather than the exposure value indicated in Article 111(2).';

(1133) Article 223 is amended as follows

(a) paragraph 4 is replaced by the following:

'4. For the purpose of calculating E in paragraph 3, the following shall apply:

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(a) for institutions calculating risk-weighted exposure amounts under the Standardised Approach, the exposure value of an off-balance sheet item listed in Annex I shall be 100 % of that item's value rather than the exposure value indicated in Article 111(2);

(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.**'**;

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(134) In Article 224, paragraph 1, Tables 1 to 4 are replaced by the following:

‘Table 1

Credit quality step with which the credit assessment of the debt security is associated	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 in Article 197(1), points (c) and (d)			Volatility adjustments for securitisation positions and meeting the criteria laid down in Article 197(1), point (h)		
		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

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Table 2

~~Credit quality step with which the credit assessment of a short term debt security is associated~~	~~Residual Maturity (m), expressed in years~~	~~Volatility adjustments for debt securities issued by entities as referred to in Article 197(1), point (b) with short-term credit assessments~~			~~Volatility adjustments for debt securities issued by entities as referred to in Article 197(1), points (c) and (d) with short-term credit assessments~~			~~Volatility adjustments for securitisation positions and meeting the criteria laid down in Article 197(1), point (h) with short-term credit assessments~~		
		~~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~~		~~0,707~~	~~0,5~~	~~0,354~~	~~1,414~~	~~1~~	~~0,707~~	~~2,828~~	~~2~~	~~1,414~~
~~2-3~~		~~1,414~~	~~1~~	~~0,707~~	~~2,828~~	~~2~~	~~1,414~~	~~5,657~~	~~4~~	~~2,828~~

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~~

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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~~

';

(135) Article 225 is deleted;

(136) 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:

$$H = H_M \cdot \sqrt{\frac{N_R + (T_M - 1)}{T_M}}$$

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where:

H = the volatility adjustment to be applied;

H_M = the voatility 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.’;

(137) 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.’;

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(138) 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 1 is replaced by the following:

‘1. Under the Standardised Approach, institutions shall use E* as calculated under Article 223(5) as the exposure value for the purposes of Article 113. In the case of off-balance sheet items listed in Annex I, institutions shall use E* as the value to which the percentages indicated in Article 111(2) shall be applied to arrive at the exposure value.’;

(b) paragraph 2 is deleted;

(139) Article 229 is amended as follows:

(a) the title is replaced by the following:

‘Valuation principles for eligible collateral other than financial collateral’;

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(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;

(ba) the value is documented in a transparent and clear manner;

(c) the value is not higher than a market value for the immovable property where such market value can be determined.

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(d) Where the property is revalued , the value of the property shall not exceed the average value measured for that property, or for a comparable propertyover the last six years for residential property or eight years for commercial immovable property or the value at origination, whichever is higher.

For the purpose of calculating the average value, institutions shall take the average across property values observed at equal intervals in time and the reference period shall include at least three data points.

For the purpose of calculating the average value, institutions may use results of the monitoring of property values in accordance with Article 208 (3). The value of the property can exceed that average value or the value at origination, as applicable, in case of modifications made to the property that unequivocally increase its value, such as improvements of the energy performance or improvements to the resilience, protection and adaptation to physical risks of the building or housing unit. The property value shall not be revalued upward if institutions do not have sufficient data to calculate the average value except if the value increase is based on modifications that unequivocally increase its value;

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The value of the property shall take account of any prior claims on the immovable property , unless a prior claim is taken into account in the calculation of the gross exposure amount according to Article 124(5)(c) or as reducing the amount of 55% of the property value according to Article 125(1) or 126(1), and reflect***, where applicable,*** the results of the monitoring required under Article 208(3)~~.~~***’***;

(c) the following paragraph 4 is added :

‘4. EBA shall develop draft regulatory technical standards to specify the criteria and factors to be considered for the assessment of the term “comparable property”, as referred to in paragraph 1 point (d).

EBA shall submit those draft regulatory technical standards to the Commission by...[36 months after entry into force of this amending 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;’;

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(140) 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;

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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***$)$;

$E_U = E \cdot (1+-$***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 %~~

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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).';

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(141) 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).’;

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(142) 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.’;

(143) 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.’;

(144) 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’;

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(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(2)***;

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 ***applicable for a direct exposure*** to the protection provider as specified in Chapter 2.’;

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(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.’;

(145) the following Article 235a is inserted:

‘Article 235a

Calculating risk-weighted exposure ***amounts*** 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

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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 Section 5;

R = the risk weight of exposures to the obligor as specified in Chapter 3;

G = the risk weight ***applicable for a direct exposure*** to the protection provider as specified in Chapter 2.

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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.';

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(146) 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 ***without the use of own estimates of LGD*** 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’;

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(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– may account for any ***funded credit protection securing the unfunded credit protection*** 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.

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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.';

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(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.’;

(147) 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

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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, ***without the use of own estimates of LGD,*** 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 ***calculated in accordance with Article 235a(1)***. 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(1)***. 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.

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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.’**;**

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(148) in Article 252, point b, the definition for the RW* is amended as follows:

'RW* = risk-weighted exposure amounts for the purposes of point (a) of Article 92(4);

,

(149) in Part three, Title II, Chapter 4, Section 6 is deleted;

(150) Article ***273 is amended as follows:***

(a) ***in paragraph 1 the first subparagraph*** is replaced by the following:

'1. Institutions shall calculate the exposure value for the contracts listed in Annex II and for credit derivatives, with the exception of the credit derivatives referred to in paragraph 3 or 5, on the basis of one of the methods set out in Sections 3 to 6 in accordance with this Article.';

(b) in paragraph 3, point (b) is replaced by the following:

'(b) in accordance with Article 183, where permission has been granted in accordance with Article 143.';

(151) Article 273a paragraph 3 is amended as follows:

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

'(b) the absolute value of the aggregated long position shall be summed with the absolute value of the aggregated short position.';

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(b) the following subparagraphs are added:

'For the purposes of the first subparagraph, the meaning of long and short positions is the same as the meaning set out in Article 94(3).

For the purposes of the first subparagraph, the value of the aggregated long (short) position shall be equal to the sum of the values of the individual long (short) positions included in the calculation in accordance with point (c).';

(152) 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:';

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(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.’;

(153) 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:

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(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.

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(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·K and 1.05·K respectively;

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(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.'*;*

(154) in Article 276(1), point (d) is replaced by the following:

'(d) the volatility-adjusted value of any type of collateral received or posted shall be calculated in accordance with Article 223;';

(155) in Article 277a(2), the following subparagraph is added:

'For the purposes of point (a) of the first subparagraph of this paragraph, institutions shall assign transactions to a separate hedging set of the relevant risk category following the same hedging set construction outlined in paragraph 1.';

(156) Article 279a is amended as follows:

(a) in paragraph 1, point (a), the introductory sentence is replaced by the following:

'(a) for call and put options that entitle the option buyer to purchase or sell an underlying instrument at a positive price on a single or multiple dates in the future, except where those options are mapped to the interest rate risk or commodity risk categories, institutions shall use the following formula;';

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(b) paragraph 3 is amended as follows:

(i) point (a) is replaced by the following:

'(a) in accordance with international regulatory developments, the formulas that institutions shall use to calculate the supervisory delta of call and put options mapped to the interest rate risk or commodity risk categories compatible with market conditions in which interest rates or commodity prices may be negative as well as the supervisory volatility that is suitable for those formulas;';

(ii) subparagraph 2 is replaced by the following:

'EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert date = 12 months after the entry into force of this Regulation];';

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(157) Article 285 is amended as follows:

(a) paragraph 7 is replaced by the following:

‘7. If an institution is not able to model collateral jointly with the exposure, it shall not recognise in its exposure value calculations for OTC derivatives the effect of collateral other than cash of the same currency as the exposure itself, unless the institution uses the volatility adjustments under the standard Supervisory Volatility Adjustments Approach in accordance with Chapter 4.’;

(b) the following paragraph 7a is inserted:

‘7a. If an institution is not able to model collateral jointly with the exposure, it shall not recognise in its exposure value calculations for securities financing transactions the effect of collateral other than cash of the same currency as the exposure itself.’;

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(158) in Article 291(5), point (f) is replaced by the following:

'(f) to the extent that this uses existing market risk calculations for own funds requirements for default risk as set out in Title IV, Chapter 1a, Section 4 or 5 or for default risk using an internal default risk model as set out in Title IV, Chapter 1b, Section 3 that already contain an LGD assumption, the LGD in the formula used shall be 100 %.';

(159) 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.

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(d) "grouped losses" means all operational losses caused by a common underlying trigger or root cause that could be grouped into one operational risk event.

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:

$$BIC = \begin{cases} 0.12 \cdot \text{BI}, & \text{where BI} \leq 1 \\ 0.12 + 0.15 \cdot (\text{BI} - 1), & \text{where } 1 < \text{BI} \leq 30 \\ 4.47 + 0.18 \cdot (\text{BI} - 30), & \text{where BI} > 30 \end{cases}$$

where:

BIC = the business indicator component;

BI = the business indicator, expressed in billions of euro, calculated in accordance with Article 314.

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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.

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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 ***leases*** 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 ***differences*** over the ***last*** three financial years;

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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 ***last*** 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 ***last*** three financial years.

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2a. By way of derogation from paragraph 2, an EU parent institution may, until 31 December 2027, request permission from its consolidating supervisor to calculate a separate interest, leases and dividend component for any of its specific subsidiary institutions and sum the outcome of this calculation with the interest leases and dividend component calculated, on a consolidated basis, for the other entities of the group where all of the following conditions are met:

(a) the subsidiaries' retail or commercial banking activities account for the majority of their activity;

(b) a significant proportion of the subsidiaries' retail or commercial banking activities comprise loans associated with a high PD;

(c) the use of this derogation provides an appropriate basis for calculating its own funds requirements for operational risk.

Once granted, the permission, and its conditions, shall be reassessed by the consolidating supervisor every two years.

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The consolidating supervisor shall notify EBA as soon as such permission is granted, confirmed or withdrawn.

By 31 December 2031, EBA shall report to the Commission on the use and appropriateness of this derogation having regard, in particular, to the specific business models concerned and to the adequacy of the related own funds requirements for operational risk. 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 2032.

2b. Until 31 December 2027 or until the consolidating supervisor grants a permission in accordance with paragraph 2a, whichever is the earliest, an EU parent institution that has received the permission to apply the Alternative Standardised Approach for the business lines 'retail banking' and 'commercial banking' to calculate their own funds requirement for operational risk may, after having informed its consolidating supervisor, continue to use the Alternative Standardised Approach as it stood prior to [OP please insert the date of entry into force of this amending Regulation] for the purpose of calculating the own funds requirements for operational risk relating to these two business lines and according to the scope subject to the current permission.

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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 ***last*** 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 ***operating*** expenses, which is the annual average over the ***last*** 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 ***last*** 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;

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FE = the fee and commission expenses component, which is the annual average over the ***last*** 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.

Subject to the prior permission of the competent authority, and to the extent that the institutional protection scheme disposes of suitable and uniformly stipulated systems for the monitoring and classification of operational risks, institutions that are members of an institutional protection scheme meeting the requirements of Article 113(7) may calculate the SC net of any income received from or expenses paid to institutions, that are members of the same institutional protection scheme.

Any losses resulting from the related operational risks is subject to mutualisation across institutional protection scheme members.

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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 ***last*** three financial years of the net profit or loss, as applicable, on the institution's trading book, ***defined as appropriate either in accordance with accounting standards or, in accordance with Part three, Title I, Chapter 3,*** 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 ***last*** three financial years of the net profit or loss, as applicable, on the institution's ***non-trading*** 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.

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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 ***risk*** 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 ***risk*** events;

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(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.

5a. Where an institution has been in operation for less than three years, it shall use forward-looking business estimates in calculating the relevant components of its business indicator, subject to the satisfaction of its competent authority. The institution shall start using historical data as soon as it is available.

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

(a) the components of the business indicator***, and their use,*** by developing ***lists*** of typical sub-items, taking into account international regulatory standards ***and, where appropriate, the prudential boundary defined in Part three, Title I, Chapter 3***;

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(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 ***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.

7. EBA shall develop draft implementing technical standards to specify the items of the business indicator by mapping those items with the ***corresponding*** reporting cells ~~–~~ set out in Commission Implementing Regulation (EU) 2021/451[*5]***, where appropriate***.

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

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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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 ***last*** three financial years.

2. Institutions may request permission from the competent authority to exclude ***from the*** business ***indicator amounts*** related to disposed entities or activities.

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 ***paragraphs*** 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 ***...*** [18 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.

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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 ***their*** annual operational risk ***loss*** 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 ***indicator*** 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.

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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 ***...*** [18 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.

Article 317

Loss data set

1. Institutions that calculate ***an*** annual operational risk ***loss*** 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 ***dates*** 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.

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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 ▌ the date of accounting for including losses related to operational risk events in the loss data set;

(c) allocate losses and ▌ recoveries ***related to a common operational risk event or related operational risk events over time and*** 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");

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(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 ***event*** type~~.~~.

8. For the purposes of this Article, institutions shall ensure the soundness, robustness and performance of the IT ***systems and*** 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;

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(b) that the institution's IT ***systems and*** 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 ***systems and*** 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 ***systems and*** 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;

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(iii) that the institution's IT ***systems and*** 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 ***systems and*** 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 ***7*** of this Article, EBA ***shall*** develop draft regulatory technical standards establishing a risk taxonomy on operational risk ***that complies with international standards*** and a methodology to classify ~~the~~ ***the loss events included in the loss data set based on that risk taxonomy on operational risk***.

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 ***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.

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10. For the purposes of paragraph ***8***, 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:

Net loss = gross loss – recovery

where:

gross loss = a loss linked to an operational risk event before recoveries of any type;

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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.

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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 ***recorded*** 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***, unless that amount is already included under point (e)***;

(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;

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(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 ▌. 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.

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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.

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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 ***paragraphs*** 1 and 2 shall be the aggregated net loss.

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Article 320

Exclusion of losses

1. ***An*** institution ***may request permission from the competent authority*** to exclude from the calculation of the institution's annual operational risk ***loss*** 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 ***cause of the*** operational risk event at the origin of those operational risk losses will not occur again;

(b) the ***aggregated net loss of the corresponding*** operational risk ***event*** is either of the following:

(i) equal to or above ***10***% of the institution's average annual operational risk loss, calculated ***over the last ten financial years and*** 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) ***related to an*** operational risk ~~-~~ event ***that*** refers to activities divested from the business indicator in accordance with Article 315(2);

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(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 ***operational risk event***, 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;

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(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.

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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 **…** [***30*** 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.

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.

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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 … [*30* 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.

Article 322

Comprehensiveness, accuracy and quality of the loss data

1. Institutions shall have in place the organisation and processes to ***ensure*** the comprehensiveness, accuracy and quality of the loss data ***and to review it*** independently.

2. Competent authorities shall periodically***, but at least every five years,*** review the quality of the loss data of an institution that calculates ***an*** annual operational risk ***loss*** 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.

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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;

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(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 [***30*** 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.

[*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).***'***;

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(160) 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).

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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. ***The institution shall document the use of the provision set out in this paragraph, including its impact and materiality, and make the information available upon request of their competent authority.***

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.

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(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.

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4. An institution may use a combination of the alternative standardised ***approach*** referred to in paragraph 1, point (a), and the alternative internal model approach referred to in paragraph 1, point (b), on a permanent basis~~.~~ ***, provided that the total own funds requirements for market risk calculated using the alternative internal model approach represent at least 10% of the total own funds requirements for market risk. On an individual basis, an*** institution shall not use either of those approaches in combination with the simplified standardised approach referred to in paragraph 1, point (c). ***At consolidated level, an institution may use a combination of the three approaches to calculate the own funds requirements for market risk in accordance with Article 325b(4), point (b) as long as the simplified standardised approach is not used in combination with the other two approaches within a single legal entity.***

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.~~[2]~~;

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(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 = ***12*** 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.[2];

(161) Article 325a is amended as follows:

(a) the title is replaced by the following:

‘Conditions for using the Simplified Standardised Approach[2];

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(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) paragraph 2 ***is amended as follows:***

(i) 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***;’;***

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

‘(f) the absolute value of the aggregated long position shall be summed with the absolute value of the aggregated short position.’;

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(iii) the following subparagraphs are added:

'For the purpose of the first subparagraph, the meaning of long and short positions is the same as the meaning set out in Article 94(3).

For the purposes of the first subparagraph, the value of the aggregated long (short) position shall be equal to the sum of the values of the individual long (short) positions included in the calculation in accordance with points (a) and (b).';

(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.***';***

(f) paragraph 8 is deleted;

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(162) 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.

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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.';

(163) 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.';

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(c) the following paragraphs ▌ are added:

‘*2a. By way of derogation from paragraph 2, an institution shall calculate the own funds requirements for market risk in accordance with the alternative standardised approach for the institution’s holdings of its own debt instruments as the sum of the two components referred to in paragraph 2, point (a), and paragraph 2, point (c). When calculating the own funds requirements for market risk for own debt instruments under the sensitivities-based method referred to in paragraph 2, point (a), the institution shall exclude from that calculation the risks from the institution’s own credit spread.*

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.

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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***. The outcome of such a review shall be reported to the appropriate management bodies***.

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 ***at least*** 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 ***3***;

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(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 ***of up to every two years, where the institution can demonstrate to the satisfaction of the competent authority that the size, systemic importance, nature, scale and complexity of its trading book business justifies a less frequent review***.;

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5a. Competent authorities shall verify that the calculation referred to in paragraph 2, including the implementation by an institution of the requirements set out in this Chapter and in Article 325a, is performed with integrity.

5b. EBA shall develop draft regulatory technical standards to specify the assessment methodology under which competent authorities conduct the verification referred to in paragraph 5a;

EBA shall submit those draft regulatory technical standards to the Commission by ... [48 months after entry into force of this amending 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.';

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(164) 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;

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(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 (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) 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; ***when using the calculation approach referred to in paragraph 1, point (b)(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;***

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(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 ***of the CIU*** 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.

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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. ***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), ***institutions*** 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);

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(iia) a third-party vendor on condition that the data, information or risk metrics are provided or calculated by the third parties referred to in points (i) or (ii) or by another such third-party vendor;

(b) the third party provides the institution with the ~~data~~, information ***or risk metrics*** 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~~, information ***or risk metrics*** referred to in point (b) and the institution's competent authority has unrestricted access to these ~~data~~, information ***or risk metrics*** upon request.

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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**...** [***30*** 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.**'**;

(165) 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.**'**;

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(166) in Article 325s(1), the formula for s_k is replaced by the following:

‘

$$s_k = \frac{V_i(1{,}01 \cdot vol_k, x, y) - V_i(vol_k, x, y)}{0{,}01}$$

’;

(167) 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;’;

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(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;***’;***

(d) in paragraph 6, point (b) is replaced by the following:

‘(b) the institution demonstrates that those alternative definitions are more appropriate for capturing the sensitivities for the position than are the formulas set out in this Subsection, that the linear transformation referred to in the first subparagraph reflects a vega risk sensitivity, and that the resulting sensitivities do not materially differ from the ones applying those formulas. ’;

(168) Article 325u is amended as follows:

(a) the following paragraph is added:

‘4a. By way of derogation from paragraph 1, until 31 December 2032, institutions shall not apply the own funds requirement for residual risks to instruments that aim solely at hedging the market risks of positions in the trading book that generate an own funds requirement for residual risks and are subject to the same type of residual risks as the positions they hedge.

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The competent authority shall grant permission to apply the treatment referred to in the first subparagraph if the institution is able to demonstrate on an ongoing basis to the satisfaction of the competent authority that the instruments comply with the criteria to be treated as hedging positions.

The institution shall report to the competent authority the result of the calculation of the own funds requirements for the residual risks for all the instruments for which the derogation referred to in the first subparagraph is applied.';

(b) the following paragraphs are added:

'6. EBA shall develop draft regulatory technical standards to specify the criteria that the institutions must use to identify the positions qualifying for the derogation referred to in paragraph 4a. These criteria shall include, at least, the nature of the instruments referred to in paragraph 4a, the net profit and loss of the combined positions, the sensitivities of the combined positions and the risks remaining unhedged in the combined positions, taking into account in particular the possibility that the original position can be hedged by a partial amount.

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EBA shall submit those draft regulatory technical standards to the Commission by 30 June 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.'

7. By 31 December 2029, the EBA shall submit a report to the Commission on the impact of the application of the treatment referred to in paragraph 4a. On the basis of the findings of that report, the Commission shall, where appropriate, submit to the European Parliament and to the Council a legislative proposal to prolong the treatment referred to in paragraph 4a.'.

(169) 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.';

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(170) in Article 325x, the following paragraph is added:

'5. Where the contractual or legal terms of a derivative position having a debt or equity cash instrument as an underlying, and hedged with that debt or equity cash instrument, allow an institution to close out both legs of that position at the time of the expiry of the first-to- mature of the two legs with no exposure to default risk of the underlying , the net jump-to-default amount of the combined position shall be set equal to zero.';

(171) 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.***';***

(172) in Article 325ab, paragraph 2 is deleted.

(173) Article 325ad is amended as follows:

(a) paragraph 1 is replaced by the following

'1. Net JTD amounts shall be multiplied by:

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(a) for non-tranched products, the default risk weights corresponding to their credit quality as specified in Article 325y(1) and (2);

(b) for tranched products, the default risk weights referred to in Article 325aa(1).';

(b) the formula for DRC_b is replaced by the following:

$$DRC_b = \sum_{i \in long} RW_i \cdot netJTD_i - WtS_{ACTP} \cdot \left(\sum_{i \in short} RW_i \cdot |netJTD_i| \right)$$

';

(174) 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 $\sqrt{2}$.';

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(175) 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.’;

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(176) 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 %’;

(177) 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 %;’;

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(178) Article 325ak is amended as follows:

(a) Table 6 ***is amended as follows:***

(i) the column 'credit quality' is amended as follows:

– the second row is replaced by the following:

'Credit quality step 1 to 10'

– the third row is replaced by the following:

'Credit quality step 11 to 17';

(ii) 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.

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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.***'***;

(179) Article 325am ***is amended as follows:,***

(a) in paragraph 1, Table 7 is amended as follows:

(i) the column 'credit quality' is amended as follows:

– the first row is replaced by the following:

'Senior and Credit quality step 1 to 10'

– the second row is replaced by the following:

'Non-senior and credit quality step 1 to 10'

– the third row is replaced by the following:

'Credit quality step 11 to 17 and unrated';

(b) 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 ***External Rating Based*** Approach set out in Title II, Chapter ***5.'***;

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(180) 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 – EU ETS carbon trading***	~~40 %~~
3b	***Energy – non EU ETS carbon trading***	***60 %***

’;

(181) 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:

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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.';

(c) paragraph 6 is replaced by the following:

'6. For general interest rate, credit spread and commodity curvature risk factors, the curvature risk weight shall be the parallel shift of all the vertices for each curve on the basis of the highest prescribed delta risk weight referred to in Subsection 1 for the relevant risk bucket.';

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(182) 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.’;

(*b*) 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.’;

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(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) in paragraph 8, point (b) is replaced by the following:

‘(b) the assessment methodology under which competent authorities verify an institution's compliance with the requirements set out in this Chapter.’;

(***e***) paragraph 9 ***is replaced by the following:***

‘9. EBA shall issue an opinion as to whether extraordinary circumstances as referred to in paragraph 5 of this Article and in Article 325bf(6) , second subparagraph , have occurred.

For the purposes of providing that opinion, EBA shall monitor the market conditions to assess whether extraordinary circumstances have occurred and accordingly, shall notify the Commission immediately.

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EBA shall develop draft regulatory technical standards to specify the conditions and indicators that EBA shall use to determine whether extraordinary circumstances have occurred.

EBA shall submit those draft regulatory technical standards to the Commission by 30 June 2024.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the third subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.';

(183) ***Article 325ba***, is amended as follows~~:~~

(***a***)~~—~~***in paragraph 1*** the following ***subparagraph is added***:

~~—~~

'Where calculating the own funds requirements for market risk using an internal model in accordance with the first subparagraph, the institution shall not include the institution's own credit spreads in the calculation of the measures referred to in points (a) and (b) for positions in the institution's own debt instruments.';

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

'By way of derogation from the first subparagraph, an institution shall not be subject to the additional own funds requirement for the holdings of its own debt instruments.';

(c) 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);

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$ASA_{all\ portfolio}$ = 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 ***uses*** the ***alternative standardised*** approach to calculate the own funds requirements for market risk;

ASA_{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 ***uses*** the approach referred to in Article 325(1), point (b) to calculate the own funds requirements for market risk;***';***

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(184) 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 ... [*18* 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.

(185) In Article 325bd, the following paragraph is inserted:

‘5a. Currencies of Member States participating in ERM II shall be included in the most liquid currencies and domestic currency sub-category within the broad category of interest rate risk factor of Table 2.;’;

(186) 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.’;

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(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;

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(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 ***provided by third-party vendors*** are used, and the frequency of that assessment.

EBA shall submit those draft regulatory technical standards to the Commission by [OP please insert 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.';

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(187) 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:";

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(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.';

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(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.”;

(a) 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.”

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(b) 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**...** [***24*** 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.

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(188) 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.

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3. ***On the basis of the results of*** the P&L attribution requirement ~~referred to~~ ***in*** paragraph 1***, an institution*** shall ***determine and document*** a precise list of risk factors ***included in the institution's risk-measurement model*** that are deemed appropriate for verifying the institution's compliance with the back-testing requirement set out in Article 325bf. ***The institution shall keep track of any change to the list of risk factors.***";

(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;

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(b) the additional own funds requirement referred to in paragraph 2;';

(ii) point (e) is deleted;

(iii) the ***second subparagraph is*** replaced by the following:

'EBA shall submit those draft regulatory technical standards to the Commission by [***12*** months after the entry in force of this ***amending*** Regulation].";

(189) Article 325bh is amended as follows:

(a) ***paragraph 1 is amended as follows:***

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

"(d) the internal risk-measurement model shall incorporate risk factors corresponding to gold and to the individual foreign currencies in which the institution's positions are denominated; for CIUs, the actual foreign exchange positions of the CIU shall be taken into account; institutions may rely on third-party reporting of the foreign exchange position of the CIU, provided that the correctness of that report is adequately ensured;"

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(ii) 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~~.~~ ***. Where the look- through approach is carried out weekly,*** institutions ***shall be able to monitor the risks resulting from significant changes in the composition of the CIU. 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:

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(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).

– ***a third-party vendor on condition that the data, information or risk metrics are provided by or calculated from the third parties of this point or another such third-party vendor.***

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(ii) the third party provides the institution with the ~~data~~, information ***or risk metrics*** 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~~~~, information ***or risk metrics*** referred to in point (ii) and the institution's competent authority has unrestricted access to these data~~~~, information ***or risk metrics*** upon request.";

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(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;

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(190) 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.

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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.';

(191) Article 325bo(3) is replaced by the following:

3. In their internal default risk models, institutions shall capture material basis risks in hedging strategies that arise from differences in the type of product, seniority in the capital structure, internal or external ratings, vintage and other differences.

Institutions shall ensure that maturity mismatches between a hedging instrument and the hedged instrument that could occur during the one-year time horizon, where those mismatches are not captured in their internal default risk model, do not lead to a material underestimation of risk.

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Institutions shall recognise a hedging instrument only to the extent that it can be maintained even as the obligor approaches a credit event or other event.

(192) Article 325bp is amended as follows:

(a) paragraph 5 is amended as follows:

(i) point (a) is replaced by the following:

'(a) the default probabilities shall be floored at 0,01 % for exposures to which a 0 % risk-weight is applied in accordance with Articles 114 to 118 of this Regulation and at 0,01 % for covered bonds to which a 10 % risk-weight is applied in accordance with Article 129. The default probabilities shall be floored at 0,03 % otherwise.';

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(ii) 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.’**;**

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(iii) 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:‘

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(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:

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‘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.’**;**

(193) 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.’**;**

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(194) 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.’*;*

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(195) Article 351 is replaced by the following:

> ***'If the sum of an institution's overall net foreign-exchange position and its net gold position, calculated in accordance with the procedure set out in Article 352, exceeds 2 % of its total own funds, the institution shall calculate an own funds requirement for foreign exchange risk. The own funds requirement for foreign exchange risk shall be the sum of its overall net foreign-exchange position and its net gold position in the reporting currency, multiplied by 8 %.***;

(196) in Article 352, paragraph 2 is deleted;

(197) ~~in~~ Article 361 ***is amended as follows:***

> ***(a)*** point (c) ***is deleted;***
>
> ***(b)*** the last ***subparagraph is replaced by the following:***
>
> > ***'Institutions shall notify the use they make of this Article to their competent authorities.'***;

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(198) in Part Three, Title IV, Chapter 5 is deleted;

(199) 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.’**;**

(200) 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.’**;**

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(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 ***the application and calculation of*** own funds requirements for CVA risk for such transactions.

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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 ***institutions*** 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.

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EBA shall submit those draft regulatory technical standards to the Commission by **...** [~~1~~ 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 second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/ 2010.';

(201) 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:

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(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).

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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 ***one or more of*** the conditions ***referred to in paragraph 5*** are ***complied with.***

4. ***For*** the ***purposes of paragraph 3, point (c), institutions*** shall split the ***eligible*** netting set into ***a*** hypothetical netting ***set containing*** the transactions subject to the approach referred to in paragraph 1, point (a), ***and a*** hypothetical netting set ***containing*** the transactions subject to the approach referred to in paragraph 1, point (b)***.***

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5. The conditions referred to in paragraph 3, point (c), are the following:

(***a***) the split ***is*** consistent with the ***treatment of*** the legal netting ***set when calculating*** the CVA for accounting purposes;

(***b***) the permission granted by competent authorities to use the approach referred to in paragraph 1, point (a), ***is*** limited to the ***corresponding*** hypothetical netting set ***and does not cover all transactions within the eligible netting set***.

Institutions shall ***document*** 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.';

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(202) 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;

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(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.

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(e) the institution has established a risk control unit, that is independent from business trading units and the unit referred to in point (a), and that reports directly to the management body. That risk control unit shall be responsible for designing and implementing the standardised approach and shall produce and analyse monthly reports on the output of that approach. Moreover, the risk control unit shall assess the appropriateness of the institution's trading limits and include the results of this assessment in its monthly reports; it shall have a sufficient number of staff with a level of skills that is appropriate to fulfil its purpose.

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 ***position*** 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.

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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;

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(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.’;

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(203) 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 ***383*** 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 ***agreements*** 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-***consensus expected*** loss-given-default for that counterparty.

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(c) the expected loss-given-default referred to in point (a) shall be the same as the market-***consensus expected*** 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;

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(*e*) the regulatory CVA model is capable of modelling significant dependency between the simulated discounted future exposure of the portfolio of transactions ***and*** the counterparty's credit spreads;

(*f*) 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 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;

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(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.

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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 (***c***), collateral received from the counterparty shall not change the seniority of the exposure.

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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:

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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);

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(c) the institution shall have an independent ***validation*** 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;

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(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;

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(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;

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(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;

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(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 ▌business ***lines***. 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;

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(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.

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3. EBA shall develop draft regulatory technical standards to specify***:***

(a) how proxy spreads referred to in paragraph 1, ***third subparagraph,*** point (ii), are to be determined by the institution for the purposes of calculating default probabilities***;***

(b) 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;

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(c) which other instruments referred to in paragraph 1, ***third subparagraph,*** point (i), are appropriate to estimate the counterparty's probabilities of default and how institutions shall perform this estimation.

EBA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by… [36 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.

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5. 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 ***the*** draft regulatory technical standards ***referred to in the first subparagraph*** to the Commission ***by...[48*** months ▌after the entry into force of ***this amending*** Regulation].

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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.

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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.

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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 ***or*** 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, ~~–~~that the resulting ***delta and vega*** sensitivities do not materially differ from ***the ones obtained applying the*** formulas ***set out in Articles 383i and 383j, respectively***.

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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 ***factors*** that correspond to qualified index instruments ***for the following risk classes:***

(i) counterparty credit spread risk,

(ii) reference credit spread risk and

(iii) equity risk.

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~~–~~. For vega risks, all index instruments shall be considered qualified.

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An institution shall calculate sensitivities of CVA and eligible hedges to qualified index risk factors in addition to sensitivities to the non-index risk factors.

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.

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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.

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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} fo 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.

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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***n, 383q, 383sa, 383u*** and 383-***w*** giving rise to the risk-class specific own funds requirements for delta or vega risk:

$$Risk - class\ specific\ own\ funds\ requirement\ for\ delta\ or\ vega\ risk$$
$$= m_{CVA}\sqrt{\sum_{b} K_b^2 + \sum_{b}\sum_{b\neq c} \gamma_{bc} S_b S_c}$$

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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.

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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.

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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***,*** the institution's reporting currency ***and the currency of a Member States participating in ERM II***.***'***

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.

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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.

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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 ***or the institution's base currency where the institution is using a base currency in accordance with Article 325q(7)***. There shall be one bucket per currency pair, containing a single risk factor and a single net sensitivity.

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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.

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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 counterparty credit spread risk class is not subject to vega risk own funds requirements.

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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.

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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.

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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.

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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:

$$S_{r_{kt}}^{CVA} = \frac{V_{CVA}(r_{kt} + 0.0001, x, y \ldots) - V_{CVA}(r_{kt}, x, y \ldots)}{0.0001}$$

$$S_{r_{kt}}^{hedge_i} = \frac{V_i(r_{kt} + 0.0001, w, z \ldots) - V_i(r_{kt}, w, z \ldots)}{0.0001}$$

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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.

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(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:

$$S_{infl_{kt}}^{CVA} = \frac{V_{CVA}(infl_{kt} + 0.0001, x, y \ldots) - V_{CVA}(infl_{kt}, x, y \ldots)}{0.0001}$$

$$S_{infl_{kt}}^{hedge_i} = \frac{V_i(infl_{kt} + 0.0001, w, z \ldots) - V_i(infl_{kt}, w, z \ldots)}{0.0001}$$

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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.

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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:

$$S_{FX_k}^{CVA} = \frac{V_{CVA}(FX_k \cdot 1.01, x, y \ldots) - V_{CVA}(FX_k, x, y \ldots)}{0.01}$$

$$S_{FX_k}^{hedge_i} = \frac{V_i(FX_k \cdot 1.01, w, z \ldots) - V_i(FX_k, w, z \ldots)}{0.01}$$

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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.

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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:

$$S_{ccs_{kt}}^{CVA} = \frac{V_{CVA}(ccs_{kt} + 0.0001, x, y \ldots) - V_{CVA}(ccs_{kt}, x, y \ldots)}{0.0001}$$

$$S_{ccs_{kt}}^{hedge_i} = \frac{V_i(ccs_{kt} + 0.0001, w, z \ldots) - V_i(ccs_{kt}, w, z \ldots)}{0.01}$$

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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.

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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:

$$S_{rcs_{kt}}^{CVA} = \frac{V_{CVA}(ccs_{kt} + 0.0001, x, y \dots) - V_{CVA}(rcs_{kt}, x, y \dots)}{0.0001}$$

$$S_{rcs_{kt}}^{hedge_i} = \frac{V_i(rcs_{kt} + 0.0001, w, z \dots) - V_i(rcs_{kt}, w, z \dots)}{0.0001}$$

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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.

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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:

$$S_{EQ}^{CVA} = \frac{V_{CVA}(EQ \cdot 1.01, x, y \ldots) - V_{CVA}(EQ, x, y \ldots)}{0.01}$$

$$S_{EQ}^{hedge_i} = \frac{V_i(EQ \cdot 1.01, w, z \ldots) - V_i(EQ, w, z \ldots)}{0.01}$$

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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.

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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:

$$S_{CTY}^{CVA} = \frac{V_{CVA}(1.01 \cdot CTY, x, y \dots) - V_{CVA}(CTY, x, y \dots)}{0.01}$$

$$S_{CTY}^{hedge_i} = \frac{V_i(1.01 \cdot CTY, w, z \dots) - V_i(CTY, w, z \dots)}{0.01}$$

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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.

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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:

$$S_{vol_{kt}}^{CVA} = \frac{V_{CVA}(vol_k \cdot 0.01, x, y \ldots) - V_{CVA}(vol_k, x, y \ldots)}{0.01}$$

$$S_{vol_k}^{hedge_i} = \frac{V_i(vol_k \cdot 1.01, w, z \ldots) - V_i(vol_k, w, z \ldots)}{0.01}$$

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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 ▌;

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.

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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%.

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3. For inflation rate risk denominated in one of the currencies referred to in Article 383c(2), the risk weight of the ***delta*** 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 ***delta*** 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 ***vega*** risk factors for all currencies shall be 100%.

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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%

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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%.

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Article 383la

Correlation across buckets for interest rate risk

The cross-bucket correlation parameter for interest rate delta and vega risks shall be set at 0,5 for all currency pairs.

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%.

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2. The risk weight of the foreign exchange risk factors concerning currency pairs which are composed of the euro and the currency of a Member State participating in the second stage of the economic and monetary union (ERM II) shall be one of the following:

(a) the risk weight referred to in paragraph 1, divided by 3; or

(b) the maximum fluctuation within the fluctuation band formally agreed by the Member State and the European Central Bank, if that fluctuation band is narrower than the fluctuation band defined under ERM II.

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3. Notwithstanding paragraph 1a, the risk weight of the foreign exchange risk factors concerning currencies referred to in paragraph 1a which participate in the ERM II with a formally agreed fluctuation band narrower than the standard band of plus or minus 15 % shall equal the maximum percentage fluctuation within that narrower band.'

4. The risk weights for all vega sensitivities to foreign exchange risk factor shall be 100%.

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Article 383n

Correlations for foreign exchange risk

1. A uniform correlation parameter equal to 60% shall apply ***for*** the aggregation of sensitivities to delta ***foreign exchange risk factor across buckets.***

2. ***A uniform correlation parameter equal to 60% shall apply for the aggregation of sensitivities to*** vega foreign exchange risk ***factor across buckets***.

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Article 383o

Risk weights for counterparty credit spread risk

1. The risk weights for the delta sensitivities to ***counterparty*** 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%

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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%
8a		Covered bonds issued by credit institutions established in a Member State	1,0%
8b	Credit quality step 1	Covered bonds issued by credit institutions in third countries	1,5%
	Credit quality steps 2 to 3		2,5%
9	Credit quality steps 1 to 3	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 a central government, a	12,0%

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		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%

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Where there are no external ratings for a specific counterparty, institutions may, subject to supervisory approval, map the internal rating to a corresponding external rating and assign a risk weight corresponding to either credit quality step 1 to 3 or credit quality step 4 to 6. Otherwise, the risk weights for unrated exposures are to be applied.

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.

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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:

$$\rho_{kl} = \rho_{kl}^{(tenor)} \cdot \rho_{kl}^{(name)} \cdot \rho_{kl}^{(quality)}$$

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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, ***90% if the two names are distinct but legally related and*** 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%.

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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, ***90% if the two indices are the same but of distinct series, and*** 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%.

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Article 383q

Correlations across buckets for counterparty credit spread risk

The cross-bucket correlations for ***counterparty*** 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	8a and 8b	9 and 18	10 and 19
1, 2, 3, 11 and 12	100%	10%	20%	25%	20%	15%	10%	0%	45%
4 and 13		100%	5%	15%	20%	5%	20%	0%	45%
5 and 14			100%	***20***%	25%	5%	5%	0%	45%
6 and 15				100%	***25***%	5%	15%	0%	45%
7 and 16					100%	5%	20%	0%	45%
8 and 17						100%	5%	0%	45%
8a and 8b							100%	0%	45%
9 and 18								100%	0%
10 and 19									100%

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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 ***government*** 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%

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Bucket number	Credit quality	Sector	Risk weight (percentage points)
7		Technology, telecommunications	2,0%

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Bucket number	Credit quality	Sector	Risk weight (percentage points)
8		Health care, utilities, professional and technical activities	1,5%
8a		***Covered bonds issued by credit institutions established in a Member States***	***1,0 %***
8b	***Credit quality step 1***	***Covered bonds issued by credit institutions in third countries***	***1,5 %***
	Credit quality steps 2 to 3	***Covered bonds issued by credit institutions in third countries***	***2,5 %***
9	Credit Quality Step 1 to 3	Qualified indices	1,5%
10	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%
11		Regional ***government*** or local authority and public sector entities	4,0%
12		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%

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Bucket number	Credit quality	Sector	Risk weight (percentage points)
13		Basic materials, energy, industrials, agriculture, manufacturing, mining and quarrying	7,0%
14		Consumer goods and services, transportation and storage, administrative and support service activities	8,5%
15		Technology, telecommunications	5,5%
16		Health care, utilities, professional and technical activities	5,0%
17		Qualified indices	5,0%
18	Other sector		12,0%

Where there are no external ratings for a specific counterparty, institutions may, subject to supervisory approval, map the internal rating to a corresponding external rating and assign a risk weight corresponding to either credit quality step 1 to 3 or credit quality step 4 to 6. Otherwise, the risk weights for unrated exposures are to be applied.

2. Risk weights for reference credit spread volatilities shall be set at 100%.

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3. 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.

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4. Institutions shall assign to buckets 10 and 18 only exposures that reference qualified indices as referred to in Article 383b(4).

5. 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_k, resulting from risk exposures assigned to sector buckets 1 to 9 and 11 to 18 of Article ~~┼~~383r(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, ***90% if the two names are distinct but legally related and*** 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%.

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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, ***90 % if the two indices are the same but of distinct series, and*** 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 383sa

Cross-bucket correlation for the reference credit spread risk

1. The cross-bucket correlations for reference credit spread delta risk and reference credit spread vega risk shall be the following: …

Table 5a

Bucket	1, 2 and 11	3 and 12	4 and 13	5 and 14	6 and 15	7 and 16	8 and 17	8a and 8b	19	10	18
1, 2, and 11	100%	75%	10%	20%	25%	20%	15%	10 %	0%	45%	45%
3 and 12		100%	5%	15%	20%	15%	10%	10 %	0%	45%	45%

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4 and 13			100%	5%	15%	20%	5%	20 %	0%	45%	45%
5 and 14				100%	20%	25%	5%	5 %	0%	45%	45%
6 and 15					100%	25%	5%	15 %	0%	45%	45%
7 and 16						100%	5%	20 %	0%	45%	45%
8 and 17							100%	5 %	0%	45%	45%
8a and 8b								100%	0 %	45 %	45 %
19									100%	0%	0%
10										100%	75%
18											100%

2. By way of derogation from paragraph 1, the cross-bucket correlation values calculated in paragraph 1 will be divided by 2 for correlations between a bucket from the group buckets 1 to 11 and a bucket from the group buckets 13 to 19.

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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 [redacted]
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,	40%

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Bucket number	Market capitalisation	Economy	Sector	Risk weight for equity spot price
			manufacturing, mining and quarrying	

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Bucket number	Market capitalisation	Economy	Sector	Risk weight for equity spot price
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).

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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 ***or*** 13 of Article 383t(1), Table 6, and the other bucket falls between buckets 1 ***to*** 10 of Article 383t(1), Table 6;

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(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 number	Bucket name	Risk weight for commodity spot price
1	Energy – Solid combustibles	30%
2	Energy – Liquid combustibles	35%
3	Energy - Electricity	60%
4	***Energy - EU ETS Carbon trading***	40%
4a	***Energy - non-EU ETS Carbon trading***	***60%***
5	Freight	80%

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Bucket number	Bucket name	Risk weight for commodity spot price
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%.

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Article 383w

Correlations across 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.’;

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(204) 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.

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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:

$$\boldsymbol{BACVA^{total} = \beta \cdot BACVA^{csr-unhedged} + DS_{CVA} \cdot (1 - \beta) \cdot BACVA^{csr-hedged}}$$

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:

$$SCVA_c = \frac{1}{a} \cdot RW_c \cdot \sum_{NS \in c} M_{NS}^c \cdot EAD_{NS}^c \cdot DF_{NS}^c$$

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$$SNH_c = \sum_{h \in c} r_{hc} \cdot RW_h^{SN} \cdot M_h^{SN} \cdot B_h^{SN} \cdot DF_h^{SN}$$

$$IH = \sum_i RW_i^{ind} \cdot M_i^{ind} \cdot B_i^{ind} \cdot DF_i^{ind}$$

$$HMA_c = \sum_h (1 - r_{hc}^2) \cdot (RW_h . M_h^{SN} \cdot B_h^{SN} \cdot DF_h^{SN})^2$$

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 ;

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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.

Where there are no external ratings for a specific counterparty, institutions may, subject to supervisory approval, map the internal rating to a coresponding external rating and assign a risk weight corresponding to either credit quality step 1 to 3 or credit quality step 4 to 6. Otherwise, the risk weights for unrated exposures are to be applied.

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M_{NS}^{c} = the effective maturity for the netting set NS with counterparty c;

– M_{NS}^{c} shall be calculated in accordance with Article ***162***. 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.

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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 ***factor*** 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 ***residual*** 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;

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DF_h^{SN} = the supervisory discount factor for a single name instrument recognised as an eligible hedge, calculated as follows:

$$\frac{1 - e^{-0.05M_h^{SN}}}{0.05 \cdot M_h^{SN}}$$

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 ***residual*** 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;

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:

$$\frac{1 - e^{-0.05M_i^{ind}}}{0.05 \cdot M_i^{ind}}$$

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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;

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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, ▌multilateral development banks and international organisations referred to in Articles 117(2) or Article 118	0,5 %	***2,0*** %
Regional ***government*** 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 %

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Sector of counterparty	Credit quality	
	Credit quality step 1 to 3	Credit quality step 4 to 6 and not rated
Basic materials, energy, industrials, agriculture, manufacturing, mining and quarrying	3,0 %	7,0 %

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Sector of counterparty	Credit quality	
	Credit quality step 1 to 3	Credit quality step 4 to 6 and not rated
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 %

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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 %

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3. An institution that meets the condition referred in to paragraph 1, point (b), shall calculate the own funds requirements for CVA risk as follows:

$$BACVA^{csr-unhedged} = DS_{CVA} \cdot \sqrt{\left(\rho \cdot \sum_{c} SCVA_c\right)^2 + (1-\rho^2) \cdot \sum_{c} SCVA_c^2}$$

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)***, or has been permitted by its competent authorities in accordance with Article 273a(4) to apply the approach set out in Article 282,*** 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(4***), points (a) and (f), divided by 12,5.

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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) ***or 273a(4) as applicable*** 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;

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(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

For the purpose of calculating own funds requirements for CVA risk in accordance with Article 383, positions in hedging instruments shall be recognised as 'eligible hedges' where, in addition to conditions laid down in points (a-***) to (c), such*** hedging ***instruments form*** a single position in an eligible hedge and ***are not*** 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).

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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 ***be*** subject to the own funds requirements for market risk set out in Title IV.~~;~~

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(205) Article ***394(2)*** is amended as follows:

(a) ***in*** the first subparagraph***, the introductory part*** is replaced by the following~~:~~

'2. In addition to the information referred to in paragraph 1 of this Article, institutions shall report the following information to their competent authorities in relation to their 10 largest exposures to institutions on a consolidated basis, as well as their 10 largest exposures to shadow banking entities on a consolidated basis, including large exposures exempted from the application of Article 395(1):';

(b) the following subparagraph is added:

'In addition to the information referred to in the first subparagraph, institutions shall report to their competent authorities their aggregate exposure to shadow banking entities.';

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(206) in Article 395 the following paragraph is inserted:

'2a. By ... [30 months after the date of entry into force] EBA shall, after consulting ESMA, issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010, to update the guidelines referred to in paragraph 2.

In updating those guidelines, EBA shall take into due account, among other considerations, the contribution of shadow banking entities to the Capital Markets Union, the potential adverse impact that any changes of these guidelines, including on additional limits, could have on the business model and risk profile of the institutions and on the stability and the orderly functioning of financial markets.

In addition, by 31 December 2027, EBA shall, after consulting ESMA, submit a report to the Commission on the contribution of shadow banking entities to the Capital Markets Union, on institutions' exposures to such entities, including on the appropriateness of aggregate limits or tighter individual limits to those exposures, while taking into due account the regulatory framework and business models of such entities.'

By 31 December 2028 and on the basis of that report, the Commission shall, where appropriate, submit to the European Parliament and to the Council a legislative proposal on exposure limits to shadow banking entities. ';

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(207) Article 400 is amended as follows:

(a) in paragraph 1, point (i) is replaced by the following:

'(i) exposures arising from undrawn credit facilities that are classified as 'bucket 5' off-balance sheet items in Annex I or contractual arrangements that meet the conditions for not being treated as commitments pursuant to Art. 5(9) and provided that an agreement has been concluded with the client or group of connected clients under which the facility may be drawn only if it has been ascertained that it will not cause the limit applicable under Article 395(1) to be exceeded;';

(b) in paragraph 2, point (a) is replaced by the following:

'(a) covered bonds as referred to in Article 129;';

(c) in paragraph 2, point (i) is replaced by the following:

'(i) 50 % of "bucket 4" off-balance sheet documentary credits and of "bucket 3" off-balance sheet undrawn credit facilities referred to in Annex I with an original maturity of up to and including one year and subject to the competent authorities' agreement, 80 % of guarantees other than loan guarantees which have a legal or regulatory basis and are given for their members by mutual guarantee schemes possessing the status of credit institutions;';

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(208) 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);’;

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(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 ***immovable*** 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 ***commercial immovable*** property in accordance with Article 124(7);';

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(209) in Article 425(4), point (b) is replaced by the following:

*'(b) the **counterparty** is a parent or subsidiary institution of the institution or another subsidiary of the same parent institution or linked to the institution by a relationship within the meaning of Article 22(7) of Directive 2013/34/EU or a member of the same institutional protection scheme referred to in Article 113(7) of this Regulation or the central institution or a member of a network that is subject to the waiver referred to in Article 10 of this Regulation;';*

(210) in Article 428(1), point (k) is replaced by the following:

'(k) undrawn credit facilities that qualify as 'bucket 4', 'bucket 3' or 'bucket 2' items under Annex I.';

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(211) Article 429, ***is amended as follows:***

(a) ***in*** paragraph ***5, the third subparagraph*** is replaced by the following:

'For the purposes of point (b) of the first subparagraph and of the second subparagraph of this paragraph, institutions may consider an affiliated entity as a client only where that entity is outside the regulatory scope of consolidation at the level at which the requirement set out in point (d) of Article 92(4) is applied.';

(b) 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.'***;***

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(212) Article 429a, paragraph (1) is amended as follows:

(a) the following point is inserted:

'(ca) where the institution is a member of the network referred to in Article 113(7), the exposures that are assigned a risk weight of 0% in accordance with Article 114 and arising from assets being an equivalent of deposits in the same currency of other members of that network stemming from legal or statutory minimum deposit in accordance with Article 422(3), point (b). In such a case exposures of other members of that network being legal or statutory minimum deposit are not subject to point (c).';

(b) the following point is added:

'(da) the institution's exposures to its shareholders, provided such exposures are collateralised to the level of at least 125% by assets referred to in Article 129(1), points (d) and (e) and those assets are accounted for in the shareholders' leverage ratio requirement, where the institution is not a public development credit institution but it meets the following conditions:

(i) its shareholders are credit institutions and do not exercise control on the institution as defined in Article 4(1), point (37);

(ii) it complies with points (a), (b), (c), (e) of paragraph 2;

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(iii) its exposures are located in the same Member State;

(iv) it is subject to some form of oversight by a Member State's central government on an ongoing basis;

(v) its business model is limited to the pass-through of the amount corresponding to the proceeds raised through the issuance of covered bonds to its shareholders, in form of debt instruments;';

(213) 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).–';

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(c) the following paragraph 4a is inserted:

‘4a. y 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 ***the following:***

(a) derivative contracts listed in Annex ***II and credit derivatives,*** 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)***;***

(b) credit derivatives to which they apply the treatment set out in Article 273(3) or (5), where the conditions to use that method are met.’;

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(214) 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 ***off-balance sheet item***, Article ***111(3***) shall apply.’;

(b) paragraph 3 is replaced by the following:

‘By way of derogation from Article 495d, institutions shall apply a conversion factor of 10% to off-balance sheet items in the form of unconditionally cancellable commitments.’;

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(215) 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).’;

(216) Article 430 ***is amended as follows:***

(a) ***in*** paragraph 1, the following ***points are*** added:

‘(h) their exposures to ESG risks, ***including, but not limited to :***

(i) their existing and new exposures to the fossil fuel sector entities;

(ii) their exposure to physical risks and transition risks;

(i) their exposures to crypto-assets;’;

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(b) following paragraphs 2a and 2b are inserted:

'2a. When reporting their own funds requirements for market risk referred to in point (a) of the first subparagraph of paragraph 1 of this Article, institutions shall report separately the calculations set out in Article 325c(2), points (a), (b) and (c) for the portfolio of all trading book positions or non-trading book positions that are subject to foreign exchange and commodity risks.

2b. When reporting their own funds requirements for market risk referred to in point (a) of the first subparagraph of paragraph 1 of this Article, institutions shall report separately the calculations set out in Article 325ba(1), points (a)(i), (a)(ii), (b)(i) and (b)(ii) and for the portfolio of all trading book positions or non-trading book positions that are subject to foreign exchange and commodity risks assigned to the trading desks for which institutions have been granted permission by the competent authorities to use the alternative internal model approach in accordance with Article 325az(2).';

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(c) paragraph 7 is amended as follows:

(i) the first subparagraph is replaced by the following:

'EBA shall develop draft implementing technical standards to specify the uniform reporting formats, the frequency and dates of reporting, as well as the definitions, and shall develop IT solutions, including reporting templates and instructions for the reporting referred to in paragraphs 1 to 4.';

(ii) in the fourth subparagraph, the following point is added:

'(c) exposures to ESG risks, which shall be submitted by... [one year after the entry into force of this amending Regulation].';

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(217) Article 430a ***is amended as follows:***

(a) 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 , ***in each case*** up to the lower of the pledged amount and 55 % of the property value, unless otherwise decided under Article 124(7)***, where applicable***;

(b) overall losses stemming from exposures for which an institution has recognised residential property as collateral, ***in each case*** up to the ***lower*** of the ***pledged amount and 100 % of the value of the*** residential property;

(c) the exposure value of all outstanding exposures for which an institution has recognised residential property as collateral ***, in each case up*** to the ***lower of the pledged amount and 100 % of the value of the*** residential property;

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(d) losses stemming from exposures for which an institution has recognised ~~[~~ commercial ***immovable*** property as collateral, ***in each case*** up to the lower of the pledged amount and 55 % of the property value, unless otherwise decided under Article 124(7)***, where applicable***;

(e) overall losses stemming from exposures for which an institution has recognised ~~[~~ commercial ***immovable*** property as collateral~~–~~***in each case*** up to the ***lower*** of the ***pledged amount and 100 % of the value of the*** commercial ***immovable*** property~~–]~~;

(f) the exposure value of all outstanding exposures for which an institution has recognised ~~–[~~ commercial ***immovable*** property as collateral***, in each case up*** to the ~~[~~***lower of the pledged amount and 100 % of the value of the*** commercial ***immovable*** property~~–]~~***.';***

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(b) paragraph 3 is replaced by the following:

'3. The competent authorities shall publish annually on an aggregated basis the data specified in points (a) to (f) of paragraph 1, together with historical data, where available, for each national immovable property market for which such data has been collected. A competent authority shall, upon the request of another competent authority in a Member State or EBA provide to that competent authority or EBA more detailed information on the condition of the residential property or commercial immovable property markets in that Member State.';

(218) Article ***430b is deleted***;

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(219) 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.

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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.';

(220) in Article 433a***, paragraph 1 is amended as follows:***

(***a***) point (***b***) ***is amended as follows:***

(i) point (***xiv***) is replaced by the following:

'(***xiv***) points (***a***), (***b***) and (***c***) ***of paragraph 2*** of Article ***455***;';

(ii) the following ***point is added***:

'(***xv***) Article ***449a.***';

(b) ***in point (c), point (i) is replaced by*** the following***:***

'(i) points (d), (da) and (h) of Article 438;';

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(221) Article 433b is replaced by the following:

‘*Article 433b*

Disclosures by small and non-complex institutions

1. *Small and non-complex institutions shall disclose the information outlined below on an annual basis:*

(a) points (a), (e) and (f) of Article 435(1);

(b) points (c), (d) and (da) of Article 438;

(c) points (a) to (d), (h), (i), (j) of Article 450(1);

(d) the key metrics referred to in Article 447;

(e) points (c) and (d) of Article 442;

(f) Article 449a’

(g) Article 449b

2. *By way of derogation from paragraph 1 of this Article, small and non-complex institutions that are non-listed institutions shall disclose the key metrics referred to in Article 447 , and ESG risks referred to in Article 449a on an annual basis.’;*

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(222) 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 ***points*** (***e1***) ***and (e2) are inserted***:

‘(***e1) the information referred to in Article 449a;***

(e2) the information referred to in Article 449b;’;

(c) the following points are added:

‘(g) points (c) and (d) of Article 442.’;

(223) 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.

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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. ***Institutions*** other ***than*** small and non-complex institutions shall submit to EBA the disclosures referred to in Article 433a and Article 433c respectively ***in electronic format***, 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 the financial reports are published before the submission of information in accordance with Article 430 for the same period, disclosures can be submitted on the same date as supervisory reporting*** 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 ***possible following the end of that period.***

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2a. By way of derogation from paragraphs 1 and 2, institutions may submit the ***information*** *required under Article 450 to EBA separately from the other information required under Titles II and III no later than within two months after the date on which institutions publish their financial statements for the corresponding year*.

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.*;*'~~;~~

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(224) Article 434a is amended as follows:

(a) the first paragraph is replaced by the following:

'EBA shall develop draft implementing technical standards to specify uniform disclosure formats, ***and*** information on the resubmission policy***,*** and ***shall develop*** IT solutions***, including instructions,*** for disclosures required under Titles II and III.[2] ;

(b) the fourth paragraph is replaced by the following:

'EBA shall submit those draft implementing technical standards to the Commission by***...*** [one year after the entry into force of this ***amending*** Regulation][2];

(225) Article 434c is inserted :

'Article 434c

Report on the feasibility of the use of reported information by institutions other than small and non-complex institutions to publish an extended set of disclosures on the EBA website

EBA shall prepare a report on the feasibility of using information reported by institutions other than small and non-complex institutions to competent authorities in accordance with Article 430 in order to publish it on its website and thus reduce the disclosure burden for such institutions.

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The report shall consider the previous work of the EBA regarding integrated data collections, shall be based on an overall cost and benefit analysis, including costs induced to competent authorities, institutions and EBA, and shall consider any potential technical, operational and legal challenges.

EBA shall submit the report on its findings to the European Parliament, to the Council, and to the Commission, by ...[36 months after entry into force of this amending Regulation .]

On the basis of that report, the Commission shall, where appropriate, submit to the European Parliament and to the Council a legislative proposal by 31 December 2031.';

(226) 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;–';

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

‘(d) the total risk exposure ***amount*** 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 ***categories*** or ***risk*** exposure ***classes***, 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 ***or risk exposure classes*** 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;***’;***

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

'(e) the on- and off-balance-sheet exposures, the risk-weighted exposure amounts and associated expected losses for each category of specialised lending referred to in Table 1 of Article 153(5) and the on- and off-balance-sheet exposures and risk-weighted exposure amounts for the categories of equity exposures set out in Article 133(3) to (6), and Article 495a(3).';

(227) 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 ***the Alternative Standardised Approach in accordance with*** Part Three, Title IV, Chapter 1a, shall disclose a general overview of their trading book positions.

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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 ***method***, 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 ***method*** 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.–';

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(228) 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.

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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).'~~;~~

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(229) 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 ***equal to*** 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 ***components and their*** sub- ***components*** for each of the three years relevant for the calculation of the business indicator;

(e) the ***amount of the reduction of the*** business indicator ***for each exclusion*** from the business indicator in accordance with Article 315(2), as well as the corresponding justifications for ***such*** exclusion.

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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 ***of exceptional operational risk events*** and amounts of ***the corresponding aggregated net*** operational risk losses that were excluded from the calculation of the annual operational risk loss in accordance with Article 320(1), ***for each of the last ten years,*** and the corresponding justifications for ~~***these***~~ ***exclusions***.’;

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(230) 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 ***inserted***:

‘(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 ***amount***;’;

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

‘(b) the total risk exposure ***amount*** 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;’

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(231) 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, -***with a distinction between environmental, social and governance risks, and between*** physical risks and transition risks ***for environmental risks***.***’***

For the purpose of the previous paragraph, institutions shall disclose information ***on ESG risks, including, but not limited to:***

(a) ***the total amount of exposures to fossil fuel sector entities as defined in Article 4, point (152a);***

(c) ***how*** the ***institution integrates the identified ESG risks in their business strategy and processes, and governance and risk management.’***

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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-***while avoiding duplication of disclosure requirements with other relevant Union law. The*** formats shall not require disclosure of information beyond the information ~~,~~ to be reported to competent authorities in accordance with Article 430(1), point (h)***, and shall especially take into account the size and complexity of the institution and the relative exposure of*** small and non-complex institutions ***subject to Article 433b to ESG risks.'***

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

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(232) the following Article is inserted:

'Article 449b

Disclosure of aggregate exposure to shadow banking entities

Institutions shall disclose the information concerning their aggregate exposure to shadow banking entities, as referred to in Article 394(2), second subparagraph .'

(233) 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.~~;~~***;***

(234) the following Article is inserted:

'Article 451b

Disclosure of exposures to crypto-assets and related activities

1. Institutions shall disclose the following information on crypto-assets and crypto- asset services as well as any other activities related to crypto-assets:

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(a) the direct and indirect exposure amounts in relation to crypto-assets including the gross long and short components of net exposures;

(b) the total risk exposure amount for operational risk;

(c) the accounting classification for crypto-asset exposures;

(d) a description of the business activities related to crypto-assets, and their impact on the risk profile of the institution;

(e) a specific description of their risk management policies related to crypto-asset exposures and services related to crypto-assets.

For the purposes of point (d), institutions shall provide more detailed information for material business activities, including the issuance of significant asset-referenced tokens within the meaning of Articles 43 and 44 of Regulation (EU) 2023/1114, significant e-money tokens within the meaning of Articles 56 and 57 of that Regulation and the provision of crypto-asset services under Articles 60 and 61 of that Regulation.

2. Institutions shall not apply the exception laid down in Article 432 for the purposes of the disclosure requirements in paragraph 1.;

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(235) 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;

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(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;

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(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;

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(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 ~~-~~***of Article*** 325ba(~~-~~***3***) , including ***all the components of the formula and*** 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(***6***)~~-~~.

3. 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 ~~-~~***Part Three*** Title ***IV***, Chapter 1a, had the institutions not been granted any permission to use their internal models for those trading desks.~~-~~;

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(236) 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 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 *2* and 4, the Member State concerned shall, in consultation with the ESRB, 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.;’

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(237) Article 461a is replaced by the following:

‘Article 461a

Own funds requirement for market risks

‘The Commission shall monitor ***the differences between*** the implementation of the international standards on own funds requirements for market risk in ~~the~~ Union ~~and~~ ***the*** implementation of those international standards ***in third countries***, including as regards the impact of the rules in terms of own funds requirements and as regards their ***date of*** application.

Where significant differences ***in such implementation are observed***, the Commission shall be empowered to adopt a delegated act in accordance with Article 462 to amend this Regulation by:

(a) applying, ***until the date of application of the legisaltive proposal referred to in the fourth paragraph or for up to three years in the absence of such a proposal, and*** where necessary to ***preserve*** a level playing field ***and*** to offset those observed differences, ***targeted operational relief measures or targeted multipliers*** equal to or greater than 0 and lower than 1 ***in the calculation of*** the institutions’ own funds requirements for market risk, ~~for~~ specific risk classes and specific risk factors, using one of the approaches referred to in Article 325(1), and laid out in:

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(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;

(b) postponing by ***up to*** 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).';

Where the Commission adopts the delegated act referred to in the second paragraph, the Commission shall, where appropriate, submit a legislative proposal ***to the European Parliament and the Council to adjust the implementation in the Union of the international standards on own funds requirements for market risk to preserve in a more permanent manner a level playing field with third countries, in terms of own funds requirements s and impact of those requirements ';***

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By...[24 months after entry into force of this amending Regulation] the EBA shall submit a report to the European Parliament***, to*** the Council ***and to the Commission***, ***on*** the ***implementation of the international standards on own funds requirements for market risk in third countries.***

On the basis of that ***report,*** the Commission ***shall, if appropriate, submit to*** the European Parliament ***and*** the Council ***a legislative proposal, in order to ensure a global level playing field***.

(238) Article 465 is replaced by the following:

Article 465

Transitional arrangements for the output floor

1. By way of derogation from Article ***92(3)***, ***point (a),*** and ***without prejudice to the derogation set out in Article 92(3), point (b),*** institutions 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;

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(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), ***and without prejudice to the derogation set out in Article 92(3), point (b),*** institutions may, until 31 December 2029, apply the following formula when calculating TREA:

$$\text{TREA} = \min\{\max\{\text{U-TREA}; x \cdot \text{S-TREA}\}; 125\% \cdot \text{U-TREA}\}$$

For the purposes of that calculation, institutions shall take into account the relevant factors 'x' referred to in paragraph 1.

3. By way of derogation from Article 92(5)***, point*** (a), point (***ii***) , ***and without prejudice to the derogation set out in Article 92(3), point (b),*** institutions may, until 31 December 2032, assign a risk weight of 65 % to exposures to corporates for which no credit assessment by a nominated ECAI is available ***and*** provided that that ***institution*** estimates the PD of those ***obligors***, calculated in accordance with Part Three, Title II, Chapter 3, is no higher than 0,5 %.

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EBA ***and ESMA, in cooperation with EIOPA,*** shall monitor the use of the transitional treatment laid down in the first subparagraph and ***assess, in particular:***

(i) the availability of credit assessments by nominated ECAIs for ~~-~~***corporates and the extent to which this has effects on institutions' lending towards*** corporates***;***

(ii) the development of credit rating agencies, barriers of entry to the market of new credit rating agencies, rate of uptake by corporates choosing to be rated by one or multiple of these agencies, and the impediments to the availability of credit assessments for corporates by ECAIs;

(iii) possible measures to address these impediments taking into account differences across economic sectors and geographical areas, the development of private or publicly led solutions such as credit scoring, private ratings mandated by institutions, as well as central bank ratings;

(iv) the appropriateness of the risk-weighted exposure amounts of unrated corporate exposures and the implications in terms of financial stability;

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(v) the approaches of third countries concerning the application of the output floor to corporate exposures and long-term level playing field considerations that could arise as a result;

(vi) compliance with the related internationally agreed standards developed by the Basel Committee of Banking Supervision (BCBS).

EBA ***and ESMA, in cooperation with EIOPA,*** shall report ~~their~~ findings to the Commission by ~~...~~***[5 years after entry into force of this amending Regulation]***

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)***, point*** (a), point (iv), ***and without prejudice to the derogation set out in Article 92(3), point (b),*** institutions 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, ***Section*** 3 where the same exposure values are calculated in accordance with the approach set out in Part Three, Title II, Chapter ~~6~~***6***, Section 6 for the purposes of the total un-floored risk exposure amount.

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5. By way of derogation from Article 92(5)***, point*** (a), point (~~–~~***ii), and without prejudice to the derogation set out in Article 92(3), point (b***), Member States may~~– allow ~~-~~***institutions*** 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 ~~-~~***determined to in accordance with Article 125(1), point (a).***

Where an institution holds a junior lien and there are more senior liens not held by that institution, to determine the part of the institution's exposure that is eligible for the 10% risk weight, the amount of 55% of the property value shall be reduced by the amount of the more senior liens not held by the institution.

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Where liens not held by the institution rank pari passu with the institution's lien, to determine the part of the institution's exposure that is eligible for the 10% risk weight, the amount of 55% of the property value, reduced by the amount of any more senior liens both held by the institution and not held by the institution -***shall be reduced by the product of:***

(i) 55% of the property value, reduced by the amount of any more senior liens, if any, both held by the institution and held by other institutions; and

(ii) the amount of liens not held by the institution that rank pari passu with the institution's lien divided by the sum of all pari passu liens.

(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 ***determined in accordance with Article 125(1), point (a)***, provided that the adjustment to own funds requirements for credit risk referred to in Article 501 is not applied.

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Where an institution holds a junior lien and there are more senior liens not held by that institution, to determine the part of the institution's exposure that is eligible for the 45% risk weight, the amount of 80 % of the property value shall be reduced by the amount of the more senior liens not held by the institution.

Where liens not held by the institution rank pari passu with the institution's lien, to determine the part of the institution's exposure that is eligible for the 45% risk weight, the amount of 80 % of the property value, reduced by the amount of any more senior liens both held by the institution and not held by the institution ***shall be reduced by the product of:***

(i) 80 % of the property value, reduced by the amount of any more senior liens, if any, both held by the institution and held by other institutions; and

(ii) the amount of liens not held by the institution that rank pari passu with the institution's lien divided by the sum of all pari passu liens.

For the purposes of assigning the risk weights in accordance with the first subparagraph, all of the following conditions shall be met:

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(a) ***the exposures qualify for the treatment according to Article 125(1);***

(b) the qualifying exposures are ***risk weighted according to Part Three, Title II, Chapter 3 of this Regulation;***

(c) ***the residential*** immovable ***property securing the qualifying exposures is*** located in the Member State that has exercised the discretion;

(***d***) over the last ~~***eight***~~ years the institution's losses ***in any given year, as reported by the institution pursuant to Article 430a(1), points (a) and (c),*** on the part of ***the*** exposures ~~***secured by mortgages on residential property up to the lower of the pledged amount and***~~ 55 % of the property value***, unless otherwise determined under Article 124(7),*** do not exceed on average 0,25 % of the ~~***sum of the exposure values of all***~~ outstanding ~~***exposures secured by mortgages on residential property.***~~

(***e***) for the ***qualifying*** exposures the institution has both the following ~~***enforceable rights***~~ in the event of the default or non-payment of the obligor:

(i) a ~~***right***~~ on the residential ~~property~~ property securing the exposure ***or the right to take a mortgage on the residential property in accordance with Article 108(4), point (g)***;

(ii) a ~~***right***~~ on the other assets and income of the obligor ***either contractually or by national applicable law***;

(***f***) the competent authority has verified that the conditions in points (a) ~~***to***~~ (~~***e***~~) are met.

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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 ***any*** remaining part of the exposures ***secured by mortgages on residential property*** 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 ~~the~~ ***the*** discretion ***referred to in the first subparagraph***, they shall notify EBA and substantiate their decision. Competent authorities shall notify the details of all the verifications referred to in the ~~second~~ ***second*** subparagraph, point (~~f~~ ***f***), to EBA.

EBA shall monitor the use of the transitional treatment ***laid down*** in the first subparagraph and ***EBA shall*** report ~~its findings~~ ***its findings*** on the appropriateness of the associated risk weights 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.';

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6. Any extension of any of the transitional arrangements referred to in paragraphs 3 and 5 of this Article, and in Articles 495b(1), 495c(1), and 495d(1) shall be limited to four years, and shall be substantiated with an evaluation equivalent to those referred to in those Articles.

7. By way of derogation from Article 92(5)(a)(iii) or Article 92(5)(b)(ii), and without prejudice to the derogation set out in Article 92(3), point (b), for exposures that are risk-weighted using the SEC-IRBA or the IAA in accordance with Art. 92(4), where the part of the standardised total risk-weighted exposure amount for credit risk, for dilution risk, for counterparty credit risk or for market risk arising from the trading book business is calculated using the SEC-SA pursuant to Articles 261 or 262, institutions shall until 31 December 2032 apply the following p-factors:

(a) p = 0,25 for a position in a securitisation to which Article 262 applies;

(b) p = 0,5 for a position in a securitisation to which Article 261 applies.'

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(239) Article 468 is amended as follows:

(a) the title is replaced by the following:

'Temporary treatment of unrealised gains and losses measured at fair value through other comprehensive income';

(b) paragraph 1 is replaced by the following:

'1. By way of derogation from Article 35, until 31 December 2025 (the 'period of temporary treatment'), institutions may remove from the calculation of their Common Equity Tier 1 items the amount A, determined in accordance with the following formula:

$A = a \bullet f$

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where:

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

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

(c) paragraph 2 is replaced by the following:

'2. Institutions shall apply the factor f, with a value equal to 1 until 31 December 2025 to calculate the amount A referred in paragraph 1.';

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(240) Article 493is amended as follows:

(a) paragraph 3 point (a) is replaced by the following:

‘(a) covered bonds as referred to in Article 129’;

(b) paragraph 3 point (i) is replaced by the following:

‘(i) 50 % of ‘bucket 4’ off-balance sheet documentary credits and of ‘bucket 3’ off-balance sheet undrawn credit facilities referred to in Annex I with an original maturity of up to and including one year and subject to the competent authorities' agreement, 80 % of guarantees other than loan guarantees which have a legal or regulatory basis and are given for their members by mutual guarantee schemes possessing the status of credit institutions;’

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(241) the following Article 494d is inserted:

‘Article 494d

Reversal -***to less sophisticated approaches***

By way of derogation from Article 149, paragraphs 1, 2 and 3, an institution may from -***the date of entry into force of this Regulation until [OP please insert data = 36 months after entry into force of this Regulation]*** , revert to -***less sophisticated approaches*** 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 ***a less sophisticated approach*** only once during that three year period;

(c) the request to revert to -***a less sophisticated approach*** is not made with a view to engage in regulatory arbitrage;

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(d) the institution has formally notified the competent authority that it wishes to revert to ***a less sophisticated 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).';

(242) 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), institutions that have received the permission to apply the ***IRB*** Approach to calculate the risk weighted exposure amount for equity exposures shall, until 31 December 2029 ***and without prejudice to Article 495a(3)***, calculate the risk weighted exposure amount for each equity exposure for which they have received the permission to apply the ***IRB*** 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]

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2. Instead of applying the treatment laid down in paragraph 1, institutions that have received the permission to apply the ***IRB*** Approach to calculate the risk weighted exposure amount for equity exposures may ~~—~~apply the treatment set out in Article 133 ~~—~~ to all of their equity exposures at any time until 31 December 2029.

Where institutions apply the first subparagraph, Article 495a, paragraphs 1 and 2 shall not apply.'

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 ***the expected loss amount*** in accordance with Article 158, paragraphs 7, 8 or 9, as applicable, as those paragraphs stood on ***...[date of adoption this amending Regulation] and apply Article 36(1), point d, and Article 62, point d, as applicable, as those paragraphs stood on ...[date of adoption of this amending Regulation] where the risk-weighted exposure amount calculated pursuant to paragraph 1, point b, is higher than the risk-weighted exposure amount calculated pursuant to paragraph 1, point a***.

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].~~—~~;

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(243) the following Articles ~~–~~ 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 higher of the risk-weight applicable on ... [one day before the date of entry into force of this amending Regulation], capped at 250%, and*** 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.

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2. By way of derogation from the treatment laid down in Article 133(4), equity exposures shall be assigned ***the higher of the risk weight applicable on ...[one day before the date of entry into force of this amending Regulation] and*** 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.

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3. By way of derogation from Article 133, institutions may continue to assign the same risk weight that was applicable ***on ... [*** one day before the date of entry into force of this amending Regulation] to equity exposures***, including the part of the exposures not deducted from own funds in accordance with Article 471 as it stood at 27 October 2021,*** to entities of which they have been a shareholder ***on 27 October 2021*** for six consecutive years and over which they ***- or together with the network the institutions belong to -*** exercise significant influence ***or control*** 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 ***or network of institutions*** and an undertaking ***, or where an institution is in the capacity to appoint at least one member of the management body of the entity***.

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:

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(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***, including the haircut parameter,*** applicable to specialised lending exposures under the IRB Approach, and in particular on own estimates of LGD and LGD input floors ***for each specific category of specialised lending as referred to in Article 147(8)*** . 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 recommend specific calibrations of risk parameters, including the haircut parameter, that would reflect the specific and different risk profile of each of the aforementioned categories of specialised lending exposures.***

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EBA shall submit the report on its findings to the European Parliament, to the Council, and to the Commission, by ***...[24 months after entry into force*** of this ***amending*** Regulation .

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 2027,

3. By way of derogation from Article 122a(3), point(a), specialised lending exposures ***as referred to in paragraph 3, point (a) of Article 122a for which a directly applicable credit assessment by a nominated ECAI is not available may, until 31 December 2032, be risk weighted at 80%, where the adjustment to own funds requirements for credit risk referred to in Article 501a is not applied and the exposure is deemed to be high quality when taking into account all of the following criteria:***

(a) the obligor can meet its financial obligations even under severely stressed conditions due to the presence of all of the following features:

(i) adequate exposure-to-value of the exposure;

(ii) conservative repayment profile of the exposure;

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(iii) commensurate remaining lifetime of the assets upon full pay-out of the exposure or alternatively recourse to a protection provider with high creditworthiness;

(iv) 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;

(v) the obligor has contractual restrictions over its activity and funding structure;

(vi) the obligor uses derivatives only for risk-mitigation purposes;

(vii) material operating risks are properly managed;

(b) the contractual ***arrangements on the assets provide lenders with a high degree of protection including the following features:***

(i) the lenders have a legally enforceable first-ranking right over the assets financed, and, where applicable, over the income that they generate;

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(ii) there are contractual restrictions on the ability of the obligor to make changes to the asset which would have a negative impact on its value;

(iii) where the asset is under construction, the lenders have a legally enforceable first-ranking right over the assets and the underlying construction contracts;

(c) the assets being financed meet all of the following standards to operate in a sound and effective manner:

(i) the technology and design of the asset are tested;

(ii) all necessary permits and authorisations for the operation of the assets have been obtained;

(iii) 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;'

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EBA shall report on the following to the Commission:

(a) an analysis of the evolution of the trends and conditions in markets for object finance in the Union;

(b) an analysis of the effective riskiness of the object finance exposures over a full economic cycle;

(c) an analysis of the impact on own funds requirements of the treatment set out in Article 122a (3), point (a), for object finance exposures, without taking into account Article 465(1) ;

(d) an analysis on the appropriateness of the definition of the sub-class of "high quality object finance" and to assign to this sub-class of exposures a different prudential treatment.

EBA shall submit the report on its findings to the European Parliament, to the Council, and to the Commission, by 31 December 2030.

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.

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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 ~~-~~***asset*** 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.

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2. EBA shall prepare a report on the appropriate calibrations of risk parameters associated with leasing exposures under the IRB Approach, ***and of risk weights under the Standardised 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 properties ***leased*** 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 ***...[36 months after entry into force of this amending Regulation***

On the basis of that report, ***and taking into account the 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 2028.***

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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 ***detail***, 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 ***and the financial stability impact of these measures***, the Commission shall, where appropriate, submit to the European Parliament and to the Council a legislative proposal by 31 December 2031 ***;***

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Article 495e

Transitional arrangements for external rating of institutions

By way of derogation from Article 138, point (g), competent authorities may allow institutions to continue using an ECAI credit assessment in relation to an institution which incorporates assumptions of implicit government support until 31 December 2029.

Article 495f

Transitional arrangements for property revaluation requirements

By way of derogation from Article 229(1), point (a) to (c) for exposures secured by residential immovable property or commercial immovable property granted before [OP please insert date = date of application of this amending Regulation], institutions may continue to value residential immovable property or the commercial immovable property at or 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, until a review of the property value is required in accordance with Article 208(3), or 31 December 2027, whichever is earlier.

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Article 495g

Transitional arrangement for certain public guarantees schemes

By way of derogation from Articles 183(1) and 213(1), a guarantee that can be cancelled in the event of fraud of the obligor or the extent of credit protection of which can be diminished in such event, shall be considered to meet the requirement referred to in Article 183(1), point (d) and in Article 213(1), point (c) where the guarantee was provided by an entity referred to in Article 214(2), point (a) no later than 31 December 2024.';

Article 495h

Transitional arrangement for the use of the alternative internal model approach for market risk

By way of derogation from Article 325az(2), point (d), institutions may use, until 1 January 2026], the alternative internal model approach to calculate their own funds requirements for market risk for trading desks that do not meet the requirements referred to in Article 325bg.'

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(244) Article 500a is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. By way of derogation from Article 114(2), until 31 December 2026, for exposures to the central governments and central banks of Member States, where those exposures are denominated and funded in the domestic currency of another Member State, the following apply:

(a) until 31 December 2024, the risk weight applied to the exposure values shall be 0 % of the risk weight assigned to those exposures in accordance with Article 114(2);

(b) in 2025, the risk weight applied to the exposure values shall be 20 % of the risk weight assigned to those exposures in accordance with Article 114(2);

(c) in 2026, the risk weight applied to the exposure values shall be 50 % of the risk weight assigned to those exposures in accordance with Article 114(2).';

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(b) paragraph 2, points (a), (b) and (c) are replaced by the following:

'(a) 100 % of the institution's Tier 1 capital until 31 December 2025;

(b) 75 % of the institution's Tier 1 capital between 1 January and 31 December 2026;

(c) 50 % of the institution's Tier 1 capital between 1 January and 31 December 2027.';

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(245) Article 500c is replaced by the following:

'By way of derogation from Article 325bf, competent authorities may, in exceptional circumstances and in individual cases, permit institutions to exclude the overshootings evidenced by the institution's back-testing on hypothetical or actual changes from the calculation of the addend set out in Article 325bf, provided that those overshootings do not result from deficiencies in the internal model and provided that they occurred between 1 January 2020 and 31 December 2021.';

(246) Article 500 is amended as follows:

(a) paragraph 1 is amended as follows:

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

'(b) the dates of the disposals of defaulted exposures are after 23 November 2016 but not later than 31 December 2024.';

(ii) subparagraph 2, is replaced by the following:

'The adjustment referred to in the first subparagraph may only be carried out until 31 December 2024 and its effects may last for as long as the corresponding exposures are included in the institution's own LGD estimates.';

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(b) the following paragraph is added:

'2a. The Commission shall, by 31 December 2026, and every two years thereafter, assess if the level of defaulted exposures in the balance sheets of the institutions has increased significantly, or it expects a significant deterioration in the institutions' asset quality, or if the degree of development of secondary markets for defaulted exposures is not adequate to ensure efficient disposals of defaulted exposures by institutions, also taking into consideration the regulatory developments on securitisation.

The Commission shall review the appropriateness of the derogation set out in paragraph 1 and it shall, where appropriate, submit a legislative proposal to extend, reintroduce, or amend, as needed, the adjustment provided in this Article.';

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(247) in Article 501(2), ***points (a) and*** (b) ***are*** replaced by the following:

‘***(a) the exposure to an SME shall be included either in the retail, or in the corporates, or in the secured by mortgages on immovable property exposure classes but excluding ADC exposures;’***

(b) an ***SME*** shall have the meaning laid down in Article 5, point (8);

(248) Article 501a(1) is amended as follows:

(a) point (a) is replaced by the following:

‘(a) the exposure is assigned to the exposure class referred to either in Article 112, point (g), or ***to any of the exposures classes referred to*** in Article 147(2), point (c), with the exclusion of exposures in default;

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

‘(f) the ***obligor’s*** ~~refinancing~~ risk 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);’;

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(c) point (o) is replaced by the following:

'(o) for exposures originated after 1 January 2025the obligor has carried out an assessment that the assets being financed contribute positively to one or more of the environmental objectives set out in Article 9 of Regulation (EU) 2020/852 and do not significantly harm the other objectives set out in Article 9 of that Regulation, or that the assets being financed do not significantly harm any of the environmental objectives set out in that Article.'

(249) Article 501c is replaced by the following:

Article 501c

Prudential treatment of exposures to environmental or social factors

'EBA, after consulting the ESRB, shall, on the basis of available data, assess whether ***the*** dedicated prudential treatment of exposures related to assets ***or liabilities,*** subject to impacts from environmental or social factors ***is to*** be ***adjusted***. In particular, EBA shall assess:

(a) ***the availability and accessibility of reliable and consistent ESG data for each exposure class determined in accordance with Title II of Part III;***

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(b) ***in consultation with the EIOPA, the feasibility of introducing a standardised methodology to identify and qualify the exposures, for each exposure class determined in accordance with Title II of Part III, based on a common set of principles to ESG risk classification, using the information on transition and physical risk indicators made available by sustainability disclosure reporting frameworks adopted in the Union and where available internationally, the guidance and conclusions coming from the supervisory stress-testing or scenario analysis of climate-related financial risks conducted by the EBA or the competent authorities and if appropriately reflecting the ESG risks, the relevant ESG score of the ECAI credit risks rating by a nominated ECAI;***

(c) the effective riskiness of exposures related to assets and activities subject to impacts from environmental ~~,~~ or social factors compared to the riskiness of other ***exposures and the possible additional and more comprehensive revisions to the framework that should be considered, taking into consideration the developments agreed at international level by the Basel Committee.***;

(***d***) the potential short, medium and long-term effects of ~~a~~ ***an adjusted*** dedicated prudential treatment of exposures related to assets and activities subject to impacts from environmental ~~,~~ or social factors on financial stability and bank lending in the Union~~,~~ ***;***

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(e) the targeted enhancements that could be considered within the current prudential framework

EBA shall submit -***successive reports*** on its findings to the European Parliament, to the Council and to the Commission by -***the following dates:***

- by...[date of entry into force] for the assessments required under point (e);

- 31 December 2024 for the assessments required under point(a) and (b);

- 31 December 2025 for the assessments required under (c) and (d);

On the basis of those reports, the Commission shall, if appropriate, submit to the European Parliament and to the Council a legislative proposal within one year of the publication of the last of those EBA reports.'

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(250) the following Article is inserted:

Article 501d

Transitional provisions on the prudential treatment of crypto assets

1. The Commission shall submit a legislative proposal to the European Parliament and the Council by 30 June 2025 to introduce a dedicated prudential treatment for exposures to crypto-assets, taking into account the international standards and Regulation (EU) 2023/1114. That legislative proposal shall include the following:

(a) criteria for assigning crypto-assets to different crypto-asset categories based on their risk characteristics and compliance with specific conditions;

(b) specific own funds requirements for all the risks entailed by different crypto-assets;

(c) an aggregate limit for exposures to specific types of crypto-assets;

(d) specific leverage ratio requirements for crypto-assets exposures;

(e) specific supervisory powers as regards crypto-asset exposure assignment, monitoring and calculation of own funds requirements;

(f) specific liquidity requirements for exposures to crypto-assets;

(g) disclosure and reporting requirements

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2. Until the entry into application of the legislative proposal referred to in paragraph 1, institutions shall calculate their own funds requirements for exposures to crypto-assets as follows:

(a) crypto-asset exposures to tokenised traditional assets shall be treated as exposures to the traditional assets that they represent;

(b) exposures to asset-referenced tokens whose issuers comply with Regulation (EU) 2023/1114 and that reference one or more traditional assets shall be assigned a 250 % risk weight;

(c) exposures to crypto-assets other than those referred to in points (a) and (b) shall be assigned a 1 250 % risk weight.

By derogation from point (a), exposures to tokenised traditional assets whose values depend on any other crypto-assets shall be assigned to point (c).

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3. The value of an institution's total exposure to crypto-assets other than those referred to in paragraph 1, points (a) and (b), shall not exceed 1 % of the institution's Tier 1 capital.

4. An institution that exceeds the limit set out in paragraph 3 shall immediately notify the competent authorities of the breach and shall demonstrate a timely return to compliance to the satisfaction of the competent authorities.

5. EBA shall develop draft regulatory technical standards to specify the technical elements necessary for institutions to calculate their own funds requirements in accordance with the approaches set out in paragraph 2, points (b) and (c), including how to calculate the value of the exposures and how to aggregate short and long exposures for the purposes of paragraphs 2 and 3.

In developing those draft regulatory technical standards, EBA shall take into consideration the relevant internationally agreed prudential standards as well as existing authorisations in the Union under Regulation (EU) 2023/1114.

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EBA shall submit those draft regulatory technical standards to the Commission by ...[1 year after entry into force of this amending 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.

6. For the calculation of their own funds requirements for exposures to crypto-assets, institutions shall not apply the deduction referred to in Article 36(1), point (b.

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(251) Articles 505 and 506 are replaced by the following:

Article 505

Review of agricultural financing

By 31 December 2030, EBA shall ***prepare a report on the impact of the requirements of this Regulation on agricultural financing, including on:***

(a) ***the appropriateness of a dedicated risk weight for own funds requirements for credit risk calculated in accordance with Title II of Part III for exposures to an agricultural enterprise;***

(b) ***if applicable, prudentially justified criteria for the application of such a dedicated risk weight, including farming practices, as well as the inclusion of exposures in the corporate, retail or immovable property exposures class;***

(c) ***the alignment with the "farm to fork" strategy and the respective environmental impact within the meaning of Regulation (EU) 2020/852, in particular with the indicators as collected in the Union's Farm Accountancy Data Network, showing contribution scores with regard to:***

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(i) net greenhouse gas emissions per hectare;

(ii) pesticides and fertilizers usage per hectare;

(iii) soil's minerals efficiency ratios including carbon, ammonia, phosphate and nitrogen per hectare;

(iv) water use efficiency;

(v) a confirmation of positive impact on these four indicators with an EU-label for organic agriculture as meant in Council Regulation (EC) No 834/2007*.

**** Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (OJ L 189, 20.7.2007, p. 1).';***

The EBA shall also prepare an intermediate report on the impact of the requirements of ***this Regulation on agricultural financing by 31 December 2027.***

Taking into account the EBA report referred to in the first subparagraph, the Commission shall submit a report to the European Parliament and to the Council. Where appropriate, that report shall be accompanied by a legislative proposal to amend this Regulation ***in order to mitigate its negative effects*** on agricultural financing.***'***

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Article 506

Credit risk – credit insurance

By ***30 June 2024***, EBA shall***, in close cooperation with EIOPA,*** report to the Commission on the eligibility and use of policy insurance as credit risk mitigation techniques***, including*** on ***:***

(a) the appropriateness of the associated risk parameters referred to in Part Three, Title II, Chapter 3 and 4***;***

(b) ***an analysis of the effective and observed riskiness of credit risk exposures where a credit insurance was recognised as a credit risk mitigation technique;***

(c) ***the consistency of own funds requirements laid down in this Regulation with the outcomes of the analysis under points (a) and (b) of this paragraph***.

On the ***basis of that*** report, the Commission shall, where appropriate, ***submit to the European Parliament and to the Council a legislative proposal***, to amend the treatment applicable to credit insurance referred to in Part Three, Title II ***by 31 December 2024***.

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(252) the following ***Articles are*** 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.–***;***

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‘Article 506ca

Prudential treatment of securitisation

By 31 December 2026, EBA, in close collaboration with ESMA, shall report to the Commission on the prudential treatment of securitisation transactions, differentiating between different types of securitisations, including synthetic securitisations, between originators and investors, and between STS- and non-STS-transactions. In particular, the EBA shall monitor the use of the transitional arrangement referred to in Article 465(5b) and assess the extent to which the application of the output floor to securitisation exposures would affect the capital reduction obtained by originating banks in transactions for which a significant risk transfer has been recognised, would excessively reduce the risk-sensitivity and would affect the economic viability of new securitisation transactions. In such cases of a reduction of risk sensitivities, the EBA may consider proposing a downward recalibration of the non-neutrality factors for transaction for which a significant risk transfer has been recognised. The EBA shall also assess the appropriateness of the non-neutrality factors, under both the SEC-SA and the SEC-IRBA taking into account the historic credit performance of securitisation transactions in the Union and the reduced model and agency risks of the framework.’

On the basis of that report and taking into account 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 2027.’

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Article 506cb

Recognition of capped or floored unfunded credit protection

1. By ...[two years after the entry into force of this amending Regulation], EBA shall submit a report to the Commission concerning:

(a) The conditions that guarante featuring caps or floors defined at the level of a portfolio of exposures ('portfolio guarantees') need to meet to qualify as securitisation under Article 4(1), point (61) of this Regulation;

(b) The regulatory treatment applicable under Part Three, Title II, Chapter 4 to portfolio guarantees where these do not qualify as securitisation under Article 4(1), point (61) of this Regulation;

(c) The application of the requirements set out in Part Three, Title II, Chapter 5 and in Chapter 2 of Regulation (EU) 2017/2402 for portfolio guarantees where these guarantees qualify as securitisation under Article 4(1), point (61) of this Regulation;

(d) The application of Article 234 for single guarantees that lead to tranching.

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2. EBA shall, in the report referred to in the first paragraph, assess in particular the following:

(a) in relation to paragraph 1, point (a), the conditions under which portfolio guarantees give rise to a tranched transfer of risk;

(b) in relation to paragraph 1, point (b)

(i) the relevant eligibility criteria of portfolio guarantees under Part Three, Title II, Chapter 4;

(ii) the application of the requirements set out in Part Three, Title II, Chapter 4.

(c) in relation to paragraph 1, point (d) , the application of the requirements established in Chapter 2 of Regulation (EU) 2017/2402 and in Part Three, Title II, Chapter 5 of this Regulation.

On the basis of that report, the Commission shall, where appropriate, submit to the European Parliament and to the Council a legislative proposal by 31 December 2027.

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Article 506cc

Prudential treatment of securities financing transactions

By...[24 months after entry into force of this amending Regulation , EBA shall report to the Commission on the impact of the new framework for securities financing transactions in terms of capital requirements attributed to the corresponding securities financing transactions which are by nature very short term activities, with a particular focus on its possible impact on sovereign debt markets in terms notably of market making capacity and cost.

EBA shall assess whether a recalibration of the associated risk weights in the Standardised Approach is appropriate, given the associated risks with respect to short term maturities, specifically for residual maturities below one year.

On the basis of that report, the Commission shall, where appropriate, submit to the European Parliament and to the Council a legislative proposal by 31 December 2027.';"

(204a) in Article 514, the following paragraph is added:

' On the basis of the report by EBA and taking due account of the implementation in third countries of the internationally agreed standards developed by the BCBS, the Commission shall, where appropriate, submit a legislative proposal to amend the approaches set out in Sections 3 to 5 of Chapter 6 of Title II of Part Three.';

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(253) the following Article is inserted:

'Article 518c

Review of the framework for prudential requirements

By 31 December 2028, the Commission shall assess the overall situation of the banking system in the Single Market, in close cooperation with the EBA and the ECB, and report, to the European Parliament and to the Council, on the appropriateness of Union regulatory and supervisory frameworks for banking.

The report shall take stock of the reforms to the banking sector which took place after the great financial crisis and assess whether these ensure an adequate level of depositor protection and safeguard for financial stability at Member State, Banking Union and Union level.

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The report shall also consider all Banking Union dimensions, as well as the implementation of the output floor as part of capital and liquidity requirements more in general. In this regard, the Commission shall duly consider the corresponding statements and conclusions on the Banking Union of both the European Parliament and the European Council.

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(254) the following ***articles*** are inserted:

‘Article 519***d***

Minimum haircut floors framework for ***securities financing transactions***

EBA, in close cooperation with ESMA, shall, by ***...***[***30*** months after entry into force of this ***amending*** Regulation], report to the Commission on the appropriateness of implementing in Union law the minimum haircut floors framework applicable to ***securities financing transactions*** 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 ***securities financing transactions*** held by institutions ***in the Union*** and subject to the minimum haircut floors framework, including the breakdown of those ***securities financing transactions*** which do not comply with the minimum haircut floors;

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(c) the estimated impact of the minimum haircut floors framework for ~~[~~ institutions ***in the Union*** 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 ~~[~~institutions ***in the Union*** would not adjust the haircuts of their ~~-~~***securities financing transactions*** 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 ***securities financing transactions*** markets ***in the Union***;

(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 ~~-~~***securities financing transactions***, 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**...** [~~[~~***42*** months after entry into force of this Regulation].

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Article 519[illegible]*e*

Operational risk

By [OP please insert the date =[illegible]*[42* 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.

(ca) the availability and quality of data used by institutions when calculating their own funds requirements for operational risk.

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 = -*[54* months after date of application of Part Three, Title III].[illegible]*;*

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(255) the following Article is inserted:

'Article 519da

Proportionality

EBA shall prepare a report assessing the overall prudential framework for small and non-complex institutions, in particular:

(a) ***EBA shall assess these requirements also in relation to banking groups and specific business models***;

(b) ***EBA shall take into account the relevance of small and non-complex institutions at institution level and by region for maintaining financial stability and credit provision in local communities.***

In considering options for changes in the framework, EBA shall base itself on the overarching principle that any simplified requirements must be more conservative.

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EBA shall report its findings to the Commission by 31 December 2027.

(256) Annex I is replaced by the Annex to this Regulation.

Article 2

Entry into force and 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***:***

3. By way of derogation from paragraph 2 of this Article, the following points ***of Article 1*** shall apply from ***...***[date of entry into force of this ***amending*** Regulation]***:***

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(a) points (1)(d) and (4)***, ensuring consistency*** with Regulation (EU) 2019/2033, - ***point (2)*** concerning certain definitions ***on credit risk and point (2a) concerning definitions in relation to crypto-assets, point (48) concerning*** the treatment of exposures in default, -***point (170a) concerning large exposures exemptions, point (196a) concerning the temporary treatment of unrealised gains and losses measured at fair value through other comprehensive income, point (199a) concerning the temporary treatment of public debt issued in the currency of another Member State, point (199c) concerning the adjustment for massive disposals, point (202a) concerning the prudential treatment of crypto-asset exposures,***

(-***b***) ~~-~~ points (***1a), (6)(c), (7)(c), (***9), ***10(c), (24a)(b) ,***(26)~~-~~, (27~~-~~)(a), (29), (34), (41), (42), (44), ***(46),*** (47), (54), (59)(c) (60)(c), (61)(g) and (h), ~~-~~66(-***f***), (69), (81), (85)(b), ***88(a), (89)(ca),*** (90)(c), (91)(c), (92)(c), ***(118)(c), (130b)(b)(ii),*** (131), (132)(b), ***135(c),*** (136)(d), ***(139a)(b), (151cb),*** (153), (154)(d), (155)(c), (156)(b***)(iii***), (166)(c), (169), (***170b), (176)(ba***), (182), (183), ***(183a),*** (189), (192), (~~-~~***193***), (196), (199), (201) to (205***a***) ***containing provisions*** that require ***the*** 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~~-~~***.***

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4. ***By way of derogation from paragraph 2 of this Article, Articles 5a, 430, 451b and 501d,*** shall apply from ***30 June 2024'***

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

Done at Brussels,

For the European Parliament	For the Council
The President	The President

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ANNEX

'ANNEX I

Classification of Off-Balance Sheet Items

Bucket	Items
1	*— Credit derivatives and 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, excluding trade finance off-balance sheet items referred to in bucket 4;* *— Other off-balance sheet items carrying similar risk, as communicated to EBA.*

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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	***— Trade finance off-balance sheet items:*** - ***warranties, including tender and performance bonds and associated advance payment and retention guarantees, and guarantees not having the character of credit substitutes;*** - ***irrevocable standby letters of credit not having the character of credit substitutes;*** - ***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.'.***

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