EUROPEAN CENTRAL BANK

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OPINION OF THE EUROPEAN CENTRAL BANK

of 24 March 2022

on a proposal for amendments to Regulation (EU) No 575/2013 as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor

(CON/2022/11)

Introduction and legal basis

On 20 January and 21 January 2022 the European Central Bank (ECB) received requests from the European Parliament and the Council of the European Union, respectively, for an opinion on a 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[1] (hereinafter the 'proposed amendments to the CRR').

The ECB notes that the proposed amendments to the CRR are closely linked to another proposal on which the ECB received a consultation request, namely a 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, environmental, social and governance risk[2] (hereinafter the 'proposed amendments to the CRD').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union since the proposed amendments to the CRR contain provisions affecting the ECB's tasks concerning the prudential supervision of credit institutions in accordance with Article 127(6) of the Treaty and the European System of Central Banks (ESCB)'s contribution to the smooth conduct of policies relating to the stability of the financial system, as referred to in Article 127(5) of the Treaty. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

General observations

The ECB welcomes the Commission's proposals, which implement the outstanding Basel III reforms[3] in the EU, reinforce the EU Single Rulebook and enhance the prudential framework for credit institutions in various areas.

The ECB emphasises the importance of finalising the EU implementation of the Basel III reforms in a timely, full, and faithful manner. These reforms address key shortcomings present in the current framework, which

1 COM(2021) 664 final.

2 COM(2021) 663 final.

3 The Basel III reforms also known as the Basel III standards are standards adopted by the Basel Committee on Banking Supervision (BCBS). The consolidated standards are available on the website of the Bank for International Settlements at www.bis.org.

were identified by past analyses carried out by both European and international bodies also in relation to European banks, and therefore these reforms are essential to ensure the soundness of the European banking sector.

A *timely* implementation of the Basel III reforms is important to swiftly address such shortcomings. The ECB therefore encourages the Union legislative bodies to conclude the legislative process promptly, and without unduly long implementation periods. This is important in order to ensure that banks may withstand future crises.

The ECB also considers it important to *fully* implement the Basel III standards. In this regard, the ECB appreciates that the Commission's proposal covers all the elements that were developed by the Basel Committee on Banking Supervision and agreed by the Group of Central Bank Governors and Heads of Supervision in December 2017.

Finally, the ECB is strongly attached to a *faithful* implementation of the Basel III reforms. This is important for financial stability, as well as for the EU's international credibility. A consistent implementation of these reforms serves to underline the EU's commitment to international financial cooperation, thus helping to underpin the functioning of the global financial system and confidence in EU banks. At the same time, a faithful implementation provides the best possible guarantee for a stable banking system, while the proposed deviations and implementation choices would leave pockets of risks insufficiently addressed in the banking sector. As explained below, these risks mainly arise in the proposed prudential treatment of real estate exposures, credit risk from unrated corporates, counterparty credit risk, equity exposures, and operational risk.

The following sections of the opinion provide detailed views on the main elements of the proposal and on the remaining risks that could be insufficiently covered if the EU decides to depart from Basel III standards.

It is also important that the prudential framework remains fit for purpose by closing identified gaps and by keeping up with innovation. The new definitions of key concepts of ancillary services undertakings and financial institutions proposed by the Commission are welcome, as they clarify the boundaries of the regulatory perimeter. The ECB also welcomes the mandate for the Commission to report on a new proposal on the prudential treatment of crypto assets.

The ECB also agrees with the Commission's view expressed in the explanatory memorandum of the proposal that there is no need for additional supervisory powers to be granted to competent authorities to impose restrictions on distributions by credit institutions in exceptional circumstances of serious economic disturbance. At the same time, the ECB observes that during such periods of economic and financial distress, credit institutions might not be willing to use their capital buffers[4]. Looking forward, the ECB is of the view that further consideration should be given to removing disincentives to using capital buffers.

4 See Opinion CON/2020/16 of the European Central Bank of 20 May 2020 on amendments to the Union prudential framework in response to the COVID-19 pandemic (OJ C 180, 29.5.2020, p. 4). All ECB opinions are published on EUR-Lex.

1. Introduction of the output floor

1.1 The output floor is an important element of the Basel III reforms. It reduces unwarranted variability of risk-weighted assets across institutions, thereby reinforcing the level playing field and strengthening the prudential framework. The ECB strongly welcomes that the Commission opted for the so-called single stack approach, regarding the implementation of the output floor, where banks only have one way of measuring their risk-weighted assets.[5]

1.2 The ECB notes nevertheless that the proposal also includes significant transitional arrangements leading to lower risk weights than those envisaged in the Basel standards in some specific areas, namely (i) residential real estate exposures with low historical losses, (ii) exposures to unrated corporates, and (iii) the calibration of counterparty credit risk related to derivative exposures. The ECB considers that these deviations from the Basel III standards are not justified from a prudential and financial stability perspective and may leave pockets of risks unaddressed.

1.3 The transitional treatment of residential real estate ('RRE') exposures in particular poses several concerns. The transitional arrangement would weaken the backstop function of the output floor in relation to residential real estate lending – an area that has the potential to endanger financial stability, as illustrated in recent reports from both the ESRB[6] and the ECB[7]. Household indebtedness and RRE overvaluation are increasing in several EU Member States, adding to the build-up of medium-term vulnerabilities and concerns over a debt-fuelled housing bubble. This could in turn leave some banks with own funds that are not commensurate to the potential losses stemming from the materialisation of these risks. The transitional arrangement may also lead to further fragmentation inside the EU banking market, insofar as institutions may be subject to different capital requirements for similar risks, depending on Member State implementation. Given these concerns, the ECB considers that there should be no such preferential treatment of RRE. If retained, this mechanism should be of a strictly temporary and limited nature.

1.4 Furthermore, the ECB is also concerned about the transitional provisions pertaining to unrated corporates. Under the Basel standards, lending to such corporates comes with a higher risk weight, which reflects the higher uncertainty about their actual riskiness. Lowering the risk weight based on a bank's own risk estimates weakens the purpose of the output floor, which is to protect against the underestimation of risks by institutions' own models, as institutions could rely on their own probability of default ('PD') estimates for attributing a lower risk weight to corporates. The Commission proposes to make the application of a 65% risk weight conditional on an estimated one-year probability of default that could be as high as 0.5%. The ECB considers that this is too broad, as it could cover corporates with elevated risk profile. Given the risks involved, the ECB therefore considers that no such exception for unrated corporates should be made. If retained, this mechanism should remain of a strictly temporary and limited nature. Finally, the ECB fully supports the efforts to increase rating

5 For additional information on the "single stack" approach for risk-based capital requirements, please see the Commission's Questions and Answers.

6 European Systemic Risk Board, Vulnerabilities in the residential real estate sectors of the EEA countries, February 2022.

7 European Central Bank, Financial Stability Review, November 2021.

coverage amongst European corporates in the medium to long term, which could additionally provide an important contribution to the Capital Markets Union project.

1.5 The ECB cautions against any change to the treatment of counterparty credit risk related to derivative exposures in the context of the output floor, be it temporary or permanent. The ECB is concerned that any change in the calibration of the standardised approach for measuring counterparty credit risk exposures ('SA-CCR') would leave some prudential risks uncovered and would underestimate the exposure amount for counterparty credit risk.

1.6 As regards the level of application of the output floor, the Commission has proposed to apply it at the highest level of consolidation. Within banking groups, this is coupled with a re-distribution mechanism of the impact incurred at the highest level of consolidation across the parent and the subsidiaries[8]. This mechanism allows EU banking groups which are bound by the output floor to allocate capital within the group more effectively compared to an application at individual level, while still reflecting the respective riskiness of the group's presence in each Member State. However, the introduction of output-floor specific requirements at the Member State sub-consolidated level may still incentivise banking groups to reorganise activities so as to minimise the output floor impact on individual parts of the group in ways that could potentially be misaligned with established organisational structures or sound risk management. In addition, it would freeze more capital at local level, leaning against the objective of enabling free movement of capital within European banking groups, which is an important precondition of financial integration. An alternative option would be to apply the output floor at both the highest consolidated level in the EU and at the Member State sub-consolidated level, without the distribution mechanism. This would already simplify the framework for banks compared to the Commission's proposal and ensure proper capitalisation in each Member State, although it would lock-in also capital at this sub-consolidated level. A second option would be to apply the output floor at the highest level of consolidation only, which would be coupled with an obligation for banks and competent authorities to ensure that the capitalisation of standalone entities is adequate[9]. This approach would not only be simpler and reduce fragmentation of the European banking sector but also duly reflect the fact that the output floor was calibrated to reduce the undue variability of risk-weighted assets at the level of the banking group, rather than at the level of each entity. This last approach is preferred by the ECB.

1.7 Finally, the ECB notes that the CRD proposal includes provisions on the interactions between the output floor, supervisory requirements and macroprudential capital buffers. These matters will be addressed in the separate opinion on the proposed amendments to the CRD[10].

2. Credit risk framework – standardised approach

2.1 The ECB welcomes the proposals to implement the new standardised approach for credit risk, as it will render those institutions that do not rely on internal models more resilient and their capital requirements more risk sensitive. However, the ECB notes with concern that the proposal also

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8 Please see the Commission's explanatory memorandum.

9 In accordance with SCO 10 of the Basel principles.

10 See 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, environmental, social and governance risk.

contains several new deviations from Basel III standards, especially as regards (i) specialised lending exposures, (ii) equity exposures, (iii) retail exposures and (iv) the methodology for collateral valuation for exposures secured by immovable property. In addition, some existing deviations have been maintained (e.g. for small and medium-sized enterprises (SMEs) and infrastructure) which should be reassessed by the co-legislators. The ECB considers that these deviations may altogether reduce the consistency and safety of the new standardised approach and leave certain risks uncovered. This could in turn leave banks without sufficient available capital in case risks materialise in these market segments. More specifically, the Basel III framework was calibrated to reflect the riskiness of specialised lending exposures and any change, such as the creation of a new category for high-quality object finance or the changes to the criteria for high-quality project financing, could leave risks uncovered, notably during the pre-operational phase of projects, and thus lower the protection for banks. Moreover, standardised risk weights should not be based on the sole judgement of institutions without model approval as to whether object financing might meet 'high quality' criteria similar to the internal ratings based ('IRB') slotting approach.

2.2 Equity exposures are inherently riskier because they are by definition subordinated to all other claims in case of default. The Basel III proposals reflect this by requiring higher capital charges for equity exposures. The ECB is therefore concerned about the deviations from this sound principle in a number of areas, as it could expose banks to greater risks in their balance sheet. This holds in particular for (i) equity exposures to other members of the same group - including those holdings in financial sector entities that banks are allowed not to deduct from their own funds, (ii) institutional protection schemes, and (iii) long-term equity exposures lasting already for six years or longer, which also have an impact on the adequacy of risk weights on a consolidated level. This would not only lock in existing very low risk weights which do not reflect the inherent riskiness of equity exposures, but it would also prolong the absence of commensurate loss-absorption capacity within the group. Furthermore, (iv) the ECB considers that the lower risk weight for equity exposures under legislative programmes should be applicable if it is accompanied by the Basel requirement of investment restrictions[11] which can be taken into account in a comprehensive assessment of these programmes as well. Moreover, (v) the transitional provision applicable to equity exposures under the IRB Approach creates undue benefits as banks may apply risk weights that are not only lower than the ones currently applicable, but transitionally even lower than those which will finally be required. The ECB therefore suggests avoiding this transitional extraordinary drop in own funds requirements for equity exposures of institutions with permission for the IRB Approach below the level that will be permanently required in the future[12].

2.3 The ECB considers that the lower risk weight for retail exposures should be restricted to natural persons with total exposures below EUR 1 million, which should be determined by considering money already owed by clients and also undrawn credit lines. In addition, the necessary correction to own funds requirements for unconditionally cancellable credit lines should not be further delayed.

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11 Please see CRE 20.59 of the Basel principles.

12 Capital requirements of bank-led financial conglomerates are also impacted by the provisions under points (iii) and (v) due to the so-called Danish compromise, according to which banks' holdings of capital instruments issued by insurance undertakings belonging to the same financial conglomerate may be risk weighted rather than deducted.

2.4 The Commission proposal also puts forward some changes to the revaluation methodologies for real estate properties, which would not be in line with the Basel standards. The ECB considers that any such revaluations should be conducted on a sound basis, in order to duly reflect changes in the valuation of the immovable collateral. Applying statistical methods for property valuation (instead of relying on a qualified independent valuer) could convey an inaccurate sense of safety. It could lead to a structural overestimation of the actual value not just of the individual properties but of the entire portfolio subject to the revaluation, which in turn lowers banks' resilience against overheating real estate markets. Also, increasing property values on the basis of average past values may imprudently allow banks to continue to rely on an increase in property values that might not be sustainable. This applies for instance quite clearly in the current environment of increasing overvaluation. These changes would add to the unwarranted effects of the transitional mechanism related to low-risk mortgage lending in the context of the output floor (as mentioned in paragraph 1.3) and could further increase banks' vulnerabilities in the real estate markets.

2.5 The Basel III framework has recalibrated its treatment of the specificities of SME and infrastructure investments through the application of risk weights empirically calibrated on data across the different institutions. The ECB therefore considers that the EU should adhere to the revised calibration.

3. Operational risk

3.1 The ECB welcomes the Commission's decision to implement the new standardised approach for operational risk in accordance with the Basel III framework, which aims to increase the comparability and simplicity of the calculation of own funds requirements.

3.2 While the ECB acknowledges that the Basel III framework offers the possibility to disregard historical losses for the calculation of capital requirements for operational risks, it regrets that the Commission did not opt for a recognition of these losses. The ECB considers that taking into account the loss history of an institution would entail more risk-sensitivity and loss coverage of capital requirements, addressing the divergence of risk profiles of institutions in highly sensitive issues such as conduct risk, money laundering or cyber incidents, and would provide greater incentives for institutions to improve their operational risk management. The ECB would therefore favour an implementation where the internal loss multiplier is determined by historical losses incurred by the institution and gradually introduced.

3.3 The ECB notes that supervisors already now are required to take into account the quality of risk management including loss history when defining the risk profile and capital requirements under the 'Supervisory Examination and Review Process' (SREP). In this regard, the usefulness of the proposed narrow obligation for supervisors to monitor at least every three years the quality of institutions' collection of historical losses should be assessed in light of the ultimate use of these historical losses in the framework, also given the fact that data quality is only one of many key considerations for managing operational risk.

4. Market risk

4.1 In its Opinion of 8 November 2017 on amendments to the Union framework for capital requirements of credit institutions and investment firms[13][14], the ECB called for a sufficiently long implementation phase of the Basel standards on market risk resulting from the fundamental review of the trading book, taking also into account further changes to Basel standards. As internationally agreed rules have now been finalised, the ECB welcomes the Commission's proposal to turn the existing reporting requirement into own funds requirements.

4.2 The ECB notes that the proposal enables the Commission to change the calibration of capital requirements under the new market risk framework, as well as to postpone by two further years the implementation of this framework. This could allow the reduction of capital requirements, thus diverging from the Basel III standards. The ECB favours limiting these powers under the current proposal. The ECB considers it important that these standards are applied consistently at international level and calls for a faithful implementation of these internationally agreed standards by 2025. This would be important to provide clarity to institutions and ensure the soundness of the EU Single Rulebook, whilst avoiding negative implications for institutions' internal implementation plans and the application and approval process for internal models. Notwithstanding the above, considered could be given to having a Commission report on the implementation of the fundamental review of the trading book in other jurisdictions in 2025, which could serve as the basis for the Union legislators to prepare possible follow-up steps for ensuring a global level playing field.

4.3 The ECB welcomes the clarity provided by the Commission proposal on the minimum frequency applicable under the look-through approach when collective investment undertakings are included in internal models. At the same time, the ECB is concerned that such a treatment might lead to some risks not being included in the internal model, and therefore suggests to add a separate requirement to identify, measure and monitor the relevant risks in case no daily look-through approach is used.

5. Credit valuation adjustment (CVA) risk

5.1 The ECB notes with concern that the Commission's proposal does not reconsider existing exemptions adopted by the Union and recalls that these exemptions were assessed as a material non-compliance in the previous regulatory consistency assessment programme of the Basel Committee in 2014[15]. The ECB considers that these deviations are not justified from a prudential perspective, and leave institutions exposed to uncovered risks from their derivatives transactions with exempted counterparties[16].

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13 See footnote 1 in SCO30.5

14 Opinion CON/2017/46 of the European Central Bank of 8 November 2017 on amendments to the Union framework for capital requirements of credit institutions and investment firms (OJ C 34, 31.1.2018, p. 5).

15 Basel Committee on Banking Supervision (2014) Regulatory Consistency Assessment Programme (RCAP) - Assessment of Basel III regulations - European Union, available on the website of the Bank for International Settlements at www.bis.org.

16 This was also highlighted by the European Banking Authority (2019) Policy advice on the Basel III reforms on credit valuation adjustment (CVA) and market risk, Recommendation CVA2: CVA exemptions, p. 9, available on the EBA website at www.eba.europa.eu.

5.2 The ECB nevertheless acknowledges the efforts made by the Commission to address issues stemming from open hedges for CVA of EU-exempted counterparties by allowing institutions to voluntarily include these counterparties in their regulatory CVA[17] and setting new reporting requirements for EU-exempted counterparties. While the latter might help foster better risk-management practices by institutions, it will neither improve their prudential situation nor induce any market discipline. To achieve the latter, a disclosure requirement should be implemented. Should the Union legislative bodies opt to maintain the existing exemptions, these proposals help to mitigate somewhat the negative effects of such exemptions, although they do not materially reduce the risks that these exposures entail for banks' balance sheets.

6. IRB approach

6.1 The ECB welcomes the proposed changes to the IRB approach for credit risk, in accordance with the final Basel III package[18], as they are deemed necessary to maintain risk sensitivity whilst significantly reducing the scope for unwarranted risk-weighted exposure amount (RWEA) variability. The ECB supports the proposal to disallow (i) the use of the advanced IRB ('A-IRB') approach for exposures to large corporates, exposures to credit institutions and investment firms and to financial institutions treated as corporates and (ii) the use of IRB for equity exposures. Likewise, the ECB supports the implementation of the input floors on risk parameters, which will ensure a minimum level of conservatism in model parameters, while reducing undue RWEA variability.

6.2 Moreover, the ECB supports the additional clarifications and enhancements related to the estimation of PD, loss given default (LGD) and credit conversion factors (CCF).

6.3 Nevertheless, the ECB would like to highlight some inconsistencies within the proposal, which may hinder the overall correct implementation of the requirements. In particular, in order to reduce the risk of misinterpretation, the ECB recommends to further align, across different articles of the amended CRR, the terms used to identify the size of corporate obligors, such as 'turnover', 'revenue' and 'sales'[19].

6.4 Furthermore, consistency needs to be ensured between default definition and the estimation and implementation of risk parameters. In particular, with regard to the implementation of the IRB approach at exposure class level, as introduced in the amended Article 148, the ECB would like to stress that, for retail exposures, this change creates the possibility to use the IRB approach for at least one of the exposure classes referred to in the new points (d)(i), (d)(ii), d(iii), (d)(iv) of Article 147(2). At the same time, for retail exposures, the ECB notes that the existing Article 178(1) allows institutions to apply the definition of default at the level of an individual credit facility rather than in relation to the total obligations of a borrower. In this regard, where the definition of default for retail exposures is defined at obligor level, the ECB recommends restricting the possibility to use the IRB approach either for all or for none of the exposure classes referred to in points (d)(i), (d)(ii), d(iii),

17 Please see the Commission's explanatory memorandum.

18 Please see in particular Basel III: Finalising post-crisis reforms (bis.org).

19 For example, in point (5a) of Article 142(1) 'large corporate' is defined by reference to the metric 'sales', while in the new Article 5(8) 'small and medium-sized enterprise' is defined by reference to the metric 'turnover'.

(d)(iv) of Article 147(2), without prejudice of the possibility to request permanent partial use under the conditions specified in Article 150.

6.5 Moreover, as regards the new requirements for PD estimates, the ECB considers that further specification of the time horizon for rating assignments, as proposed by the final Basel III standards, would ensure adequate risk differentiation despite adverse economic conditions and increase the risk-weighted asset comparability across institutions. In addition, some differences between the requirements for PD estimates for retail exposures and the requirements for PD estimates for exposures to corporates and institutions have been introduced in the proposal, which may hinder a correct interpretation by institutions. In this context, the ECB recommends further streamlining the requirements in relation to these exposure types.

7. Pillar III disclosures and reporting

7.1 The ECB welcomes the objective of the new integrated hub managed by the European Banking Authority (EBA) for Pillar III disclosures by credit institutions, which aims to reduce the burden for institutions and to facilitate the use of Pillar III information by all stakeholders. Supervisors would benefit from a centralised disclosure hub as it would facilitate their role in ensuring the quality of Pillar III information. However, the ECB notes that the proposal applies different approaches in relation to the quantitative public disclosure of small and non-complex institutions (‘SNCIs’) and larger institutions. For SNCIs, the EBA will use supervisory reporting to compile the corresponding quantitative public disclosure on the basis of a pre-defined mapping. For larger institutions, a new reporting process for disclosures would need to be developed, which would lead to double reporting of data points, as Pillar III data requirements overlap with supervisory reporting. The EBA will then receive those new templates ‘in electronic format’ and will need to publish them on the same day it receives them. The ECB considers that the SNCIs approach for quantitative disclosures could be applied to all institutions, regardless of their size and complexity, with a view to reducing the reporting burden of all institutions. The ECB also notes that the timeline for the EBA to publish Pillar III information on the centralised hub does not allow for a reconciliation between supervisory reporting and Pillar III disclosure information to be performed, which could lead to additional workload for supervisors and confusion for investors and other users of Pillar III information. Under the same logic, to ensure consistency, the policy on resubmissions to the EBA envisaged in the amended Article 434a should not be limited to public disclosures but should also cover supervisory reporting.

7.2 Moreover, qualitative disclosures and some quantitative disclosures[20] cannot be extracted from supervisory reporting on the basis of the pre-defined mapping. This issue concerns both SNCIs and other institutions. Therefore, the process to submit such disclosures to the EBA should be clarified. Also, the ECB anticipates potential difficulties for the EBA to aggregate and compare qualitative information, due to its unstructured nature.

7.3 The ECB notes that the proposed amendments to the CRD envisage an amendment to Article 106 of the CRD to empower competent authorities to require non-SNCIs to submit the disclosure

20 For instance, with reference to ESG and IRRBB disclosures.

information to the EBA for its publication on a centralised EBA website. This amendment to the CRD would become superfluous if the CRR text is amended in the direction proposed in paragraph 7.1.

8. Environmental, social and governance risks

8.1 A better integration of environmental, social and governance (‘ESG’) risks into the prudential framework is crucial to increase the resilience of the banking sector. The ECB’s comprehensive comments on the proposals concerning ESG risks will be provided in its opinion on the proposed amendments to the CRD[21]. Specifically, as regards the proposed amendments to the CRR, the ECB welcomes the Commission’s proposal to introduce harmonised definitions of ESG risks and values the stated intention to align the definitions with those proposed by the EBA in its report on management and supervision of ESG risks for credit institutions and investment firms[22]. However, the ECB observes some divergences in the wording of the proposed definitions vis-à-vis the wording used by the EBA. The definitions of the EBA are broader, covering any negative impact and not just losses. Consequently, they more faithfully reflect the nature of ESG risks, which materialise, amongst others, via strategic and reputational risk. These risks can, for instance, drive lower business volumes and affect the sustainability and viability of the institution. Hence, the ECB proposes refinements to the wording of the definitions in order to ensure closer alignment with those proposed by the EBA.

8.2 The ECB welcomes the proposal to amend Article 430 requiring institutions to report their exposure to ESG risks to their competent authorities. As the reporting of relevant qualitative and quantitative information on ESG risks facilitates the supervision of these risks, the ECB invites the Union legislative bodies and the EBA to ensure that the proposed reporting requirement is implemented as soon as possible. The ECB notes that such reporting will be subject to the principle of proportionality as specified in recital (40) of the proposed amendments to the CRR.

8.3 The ECB agrees with recital (40) of the proposed amendments to the CRR which mentions that the exposure to ESG risks is not necessarily proportional to an institution’s size and complexity. It is therefore imperative that markets and supervisors obtain adequate data from all entities exposed to those risks, independently of their size. Hence, the ECB strongly supports the proposal to apply the disclosure requirements concerning ESG risks under Article 449a to all institutions. The ECB supports the Commission’s proposal to tailor the frequency and detail of the disclosure requirements to the size and complexity of the institutions in order to duly take into account the proportionality principle. The ECB notes that it is important to ensure adequate consistency between the disclosure requirements on ESG risks for institutions and other initiatives in the area of disclosures (e.g., the Corporate Sustainability Reporting Directive), in the sense that such initiatives should put institutions in a better position to adequately assess their risks and to comply with their own disclosure obligations.

8.4 The ECB also strongly supports the proposal to bring forward the deadline by which the EBA must submit its report on the prudential treatment of exposures subject to impacts from environmental

21 See note 10 above.

22 European Banking Authority (2021) EBA Report on management and supervision of ESG risks for credit institutions and investment firms (EBA/REP/2021/18) available on the EBA’s website at www.eba.europa.eu.

and/or social factors under Article 501c. The ECB strongly supports this work and considers that bringing forward this report would further support the EU's contribution to the international policy debate on these matters.

Where the ECB recommends that the proposed amendments to the CRR are amended, a specific drafting proposal is set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document is available in English on EUR-Lex.

Done at Frankfurt am Main, 24 March 2022.

[signed]

The President of the ECB

Christine LAGARDE

EUROPEAN CENTRAL BANK

EUROSYSTEM

Technical working document

produced in connection with ECB Opinion CON/2022/11 on a proposal for amendments to Regulation (EU) No 575/2013 as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor[1]

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Amendment 1 Recital 15 of the proposed regulation	
‘(15) To ensure that the impacts of the output floor on low-risk residential mortgage lending by institutions using IRB approaches are spread over a sufficiently long period and thus avoid disruptions to that type of lending that could be caused by sudden increases in own funds requirements, it is necessary to provide for a specific transitional arrangement. For the duration of the arrangement, when calculating the output floor, IRB institutions should be able to apply a lower risk weight to the part of their residential mortgage exposures that is considered secured by residential property under the revised SA-CR. To ensure that the transitional arrangement is available only to low-risk mortgage exposures, appropriate eligibility criteria, based on established concepts used under the SA-CR, should be set. The compliance with those criteria should be verified by competent authorities. Because residential real estate markets may differ from one Member States to another, the decision on whether to activate the transitional arrangement should be left to individual Member States. The use of the transitional arrangement should be monitored by EBA.’	~~‘(15) To ensure that the impacts of the output floor on low-risk residential mortgage lending by institutions using IRB approaches are spread over a sufficiently long period and thus avoid disruptions to that type of lending that could be caused by sudden increases in own funds requirements, it is necessary to provide for a specific transitional arrangement. For the duration of the arrangement, when calculating the output floor, IRB institutions should be able to apply a lower risk weight to the part of their residential mortgage exposures that is considered secured by residential property under the revised SA-CR. To ensure that the transitional arrangement is available only to low-risk mortgage exposures, appropriate eligibility criteria, based on established concepts used under the SA-CR, should be set. The compliance with those criteria should be verified by competent authorities. Because residential real estate markets may differ from one Member States to another, the decision on whether to activate the transitional arrangement should be left to individual Member States. The use of the transitional arrangement should be monitored by EBA.’~~

1 This technical working document is produced in English only and communicated to the consulting Union institution(s) after adoption of the opinion. It is also published on EUR-Lex alongside the opinion itself.

2 Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td colspan="2"><u>Explanation</u>
The ECB considers that the proposed transitional arrangements for residential real estate (RRE) pose several concerns highlighted in paragraph 1.3 of the ECB Opinion. The ECB therefore recommends not including the proposed transitional arrangements RRE when implementing the output floor.</td></tr>
<tr><td colspan="2">Amendment 2
Point (1)(k) of Article 1 of the proposed regulation (Article 4(1), point (52) of Regulation (EU) No 575/2013[3] (the CRR))</td></tr>
<tr><td>‘(k)
[…]
(52) “operational risk” means the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, including legal risk, model risk and ICT risk, but not strategic and reputational risk;’</td><td>‘(k)
[…]
(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 not strategic and reputational risk;’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The definition should make clearer that operational risk is not limited to legal risk, model risk and ICT risk.</td></tr>
<tr><td colspan="2">Amendment 3
Point (1)(l) of Article 1 of the proposed regulation (Article 4(1), point (52a) of the CRR)</td></tr>
<tr><td>‘(l)
[…]
(52a) “legal risk” means losses, including expenses, fines, penalties or punitive damages, caused by events that result in legal proceedings, including the following:
[…]’</td><td>‘(l)
[…]
(52a) “legal risk” means **risk of** losses, including**, but not limited to,** expenses, fines, penalties or punitive damages, ~~caused by~~ **which an institution may incur as a consequence of** events that result in legal proceedings, including the following:
[…]’</td></tr>
</table>

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 amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p.1).

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td colspan="2"><u>Explanation</u>
The definition should make clearer that legal risk refers to the risk of losses or potential loss (not limited to actual losses).</td></tr>
<tr><td colspan="2">Amendment 4
Point (1)(l) of Article 1 of the proposed regulation (Article 4(1), point (52b) of the CRR)</td></tr>
<tr><td>‘(l)
[…]
(52b) “model risk” means the loss an institution may incur as a consequence of decisions that could be principally based on the output of internal models, due to errors in the development, implementation or use of such models, including the following:
[…]’</td><td>‘(l)
[…]
(52b) “model risk” means the risk of <s>the</s> loss an institution may incur as a consequence of decisions that could be principally based on the output of internal models, due to errors in the development, implementation or use of such models, including the following:
[…]’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The definition should make clearer that model risk refers to the risk of losses or potential loss (not limited to actual losses).</td></tr>
<tr><td colspan="2">Amendment 5
Point (1)(l) of Article 1 of the proposed regulation (Article 4(1), point (52c) of the CRR)</td></tr>
<tr><td>‘(l)
[…]
(52c) “ICT risk” means the risk of losses or potential losses related to the use of network information systems or communication technology, including breach of confidentiality, failure of systems, unavailability or lack of integrity of data and systems, and cyber risk;
[…]’</td><td>‘(l)
[…]
(52c) “ICT risk” means the risk of losses or potential losses related to the use of <s>network information systems or communication technology</s> information technology and communication systems, including, but not limited to, breach of confidentiality, failure or unavailability of systems, inability to change the information technology within a reasonable time and cost frame, <s>unavailability or</s> lack of integrity of data and systems, and cyberattacks <s>risk</s>;
[…]’</td></tr>
</table>

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td colspan="2"><u>Explanation</u>
The definition should make clearer that ‘ICT’ refers to information technology and communication systems (not limited to network and communication technologies). ICT risk definition should also embed events related to ICT change risk. An event that may result from cyber risk is a cyberattack.</td></tr>
<tr><td colspan="2">Amendment 6
Point (1)(l) of Article 1 of the proposed regulation (Article 4(1), points (52d) to (52i) of the CRR)</td></tr>
<tr><td>‘(l)
[…]
(52d) “environmental, social or governance (ESG) risk” means the risk of losses arising from any negative financial impact on the institution stemming from the current or prospective impacts of environmental, social or governance (ESG) factors on the institution’s counterparties or invested assets;
(52e) “environmental risk” means the risk of losses arising from any negative financial impact on the institution stemming from the current or prospective impacts of environmental factors on the institution’s counterparties or invested assets, including factors related to the transition towards the following environmental objectives:
(a) climate change mitigation;
(b) climate change adaptation;
(c) the sustainable use and protection of water and marine resources;
(d) the transition to a circular economy;
(e) pollution prevention and control;
(f) the protection and restoration of biodiversity and ecosystems;
Environmental risk includes both physical risk and transition risk.
(52f) “physical risk”, as part of the overall environmental risk, means the risk of losses arising from any negative financial impact on the institution stemming from the current or</td><td>‘(l)
[…]
(52d) “environmental, social or governance (ESG) risk” means the risk of ~~losses arising from~~ any negative financial impact on the institution stemming from the current or prospective impacts of environmental, social or governance (ESG) factors on the institution’s counterparties or invested assets;
(52e) “environmental risk” means the risk of ~~losses arising from~~ any negative financial impact on the institution stemming from the current or prospective impacts of environmental factors on the institution’s counterparties or invested assets, including factors related to the transition towards the following environmental objectives:
(a) climate change mitigation;
(b) climate change adaptation;
(c) the sustainable use and protection of water and marine resources;
(d) the transition to a circular economy;
(e) pollution prevention and control;
(f) the protection and restoration of biodiversity and ecosystems;
Environmental risk includes both physical risk and transition risk.
(52f) “physical risk”, as part of the overall environmental risk, means the risk of ~~losses arising from~~ any negative financial impact on the institution stemming from the current or</td></tr>
</table>

Text proposed by the European Commission	Amendments proposed by the ECB[2]
prospective impacts of the physical effects of environmental factors on the institution's counterparties or invested assets;	prospective impacts of the physical effects of environmental factors on the institution's counterparties or invested assets;
(52g) "transition risk", as part of the overall environmental risk, means the risk of losses arising from any negative financial impact on the institution stemming from the current or prospective impacts of the transition of business activities and sectors to an environmentally sustainable economy on the institution's counterparties or invested assets;	(52g) "transition risk", as part of the overall environmental risk, means the risk of ~~losses arising from~~ any negative financial impact on the institution stemming from the current or prospective impacts of the transition ~~of business activities and sectors~~ to an environmentally sustainable economy on the institution's counterparties or invested assets;
(52h) "social risk" means the risk of losses arising from any negative financial impact on the institution stemming from the current or prospective impacts of social factors on its counterparties or invested assets;	(52h) "social risk" means the risk of ~~losses arising from~~ any negative financial impact on the institution stemming from the current or prospective impacts of social factors on its counterparties or invested assets;
(52i) "governance risk" means the risk of losses arising from any negative financial impact on the institution stemming from the current or prospective impacts of governance factors on the institution's counterparties or invested assets;'	(52i) "governance risk" means the risk of ~~losses arising from~~ any negative financial impact on the institution stemming from the current or prospective impacts of governance factors on the institution's counterparties or invested assets;'

<u>*Explanation*</u>

The ECB values the statement in the explanatory memorandum of the proposed amendments to the CRR that the definitions of environmental, social and governance (ESG) risks are aligned with those proposed by the European Banking Authority (EBA) in its report on management and supervision of ESG risks for credit institutions and investment firms.[4] However, the ECB noticed some divergences in the wording of the proposed definitions vis-à-vis the wording used by the EBA. The definitions used by the EBA are broader, covering any negative impact and not solely losses. Consequently, the EBA definitions more faithfully reflect the nature of ESG risks, which materialise, amongst other ways, via strategic and reputational risks: these risks can, for instance, drive lower business volumes and affect the sustainability and viability of the institution. Hence, the ECB suggests to refine the wording of the definitions as proposed here in order to ensure closer alignment with those proposed by the EBA.

4 EBA/REP/2021/18 available on the EBA website at www.eba.europa.eu.

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td colspan="2" align="center">Amendment 7
Point (1)(m) of Article 1 of the proposed regulation (Article 4(1), point (55) of the CRR)</td></tr>
<tr><td>‘(m)
[…]
(55) “loss given default” or “LGD” means the expected ratio of the loss on an exposure related to a single facility due to the default of an obligor or facility to the amount outstanding at default, and, in the context of dilution risk, the loss given dilution meaning the expected ratio of the loss on an exposure due to dilution, to the amount outstanding according to the pledged or purchased receivable;
[…]’</td><td>‘(m)
[…]
(55) “loss given default” or “LGD” means the ~~expected~~ ratio of the loss on an exposure related to a single facility due to the default of an obligor or facility to the amount outstanding at default, and, in the context of dilution risk, the loss given dilution meaning the ~~expected~~ ratio of the loss on an exposure due to dilution, to the amount outstanding according to the pledged or purchased receivable;
[…]’</td></tr>
<tr><td colspan="2"> <u>Explanation</u> The ECB proposes to remove the word ‘expected’ from the definition of loss given default (LGD) since it might lead to unwarranted interpretations.</td></tr>
<tr><td colspan="2" align="center">Amendment 8
Point (1)(m) of Article 1 of the proposed regulation (Article 4(1), point (56) of the CRR)</td></tr>
<tr><td>‘(m)
[…]
(56) “conversion factor” or “credit conversion factor” or “CCF” means the expected ratio of the currently undrawn amount of a commitment from a single facility that could be drawn from a single facility before default and that would therefore be outstanding at default to the currently undrawn amount of the commitment from that facility, the extent of the commitment being determined by the advised limit, unless the unadvised limit is higher;’</td><td>‘(m)
[…]
(56) “conversion factor” or “credit conversion factor” or “CCF” means the ~~expected~~ ratio of the currently undrawn amount of a commitment from a single facility that could be drawn from a single facility before default and that would therefore be outstanding at default to the currently undrawn amount of the commitment from that facility, the extent of the commitment being determined by the advised limit, unless the unadvised limit is higher;’</td></tr>
</table>

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td colspan="2"><u>Explanation</u>
The ECB proposes to remove the word ‘expected’ from the definition of credit conversion factor (CCF) since it might lead to unwarranted interpretations. This was also recommended by the EBA in recommendation No. CR-IR 31 (Table 22) of Policy Advice on the Basel III Reforms: Credit Risk[5].</td></tr>
<tr><td colspan="2">Amendment 9
Point (1)(s) of Article 1 of the proposed regulation (Articles 4(1), points (75e), (75f) and (75g) of the CRR)</td></tr>
<tr><td>‘(s)
[…]
(75e) “exposure secured by residential property”, or “exposure secured by a mortgage on residential property”, or “exposure secured by residential property collateral”, or “exposure secured by residential immovable property”, means an exposure secured by a mortgage on residential property or secured by any other mechanisms other than mortgages but which are economically equivalent to mortgages and recognised as collateral on residential property under the applicable national law setting out the conditions for the establishment of those mechanisms;
(75f) “exposure secured by commercial immovable property”, or “exposure secured by a mortgage on commercial immovable property”, or “exposure secured by commercial immovable property collateral” means an exposure secured by a mortgage on commercial immovable property or secured by any other mechanisms other than mortgages but which are economically equivalent to mortgages and recognised as collateral on commercial immovable property under the applicable national law setting out the conditions for the establishment of those mechanisms;
(75g) “exposure secured by immovable property”, or “exposure secured by a mortgage on immovable property”, or “exposure secured by</td><td>‘(s)
[…]
(75e) “exposure secured by residential property”, or “exposure secured by a mortgage on residential property”, or “exposure secured by residential property collateral”, or “exposure secured by residential immovable property”~~,~~ means an exposure secured by ~~a mortgage on~~ residential **immovable** property~~ or secured by any other mechanisms other than mortgages but which are economically equivalent to mortgages and recognised as collateral on residential property under the applicable national law setting out the conditions for the establishment of those mechanisms~~;
(75f) “exposure secured by commercial immovable property”, or “exposure secured by a mortgage on commercial immovable property”, or “exposure secured by commercial immovable property collateral” means an exposure secured by ~~a mortgage on~~ commercial immovable property~~ or secured by any other mechanisms other than mortgages but which are economically equivalent to mortgages and recognised as collateral on commercial immovable property under the applicable national law setting out the conditions for the establishment of those mechanisms~~;
(75g) “exposure secured by immovable property”, or “exposure secured by a mortgage on</td></tr>
</table>

5 Available on the EBA website at www.eba.europa.eu.

Text proposed by the European Commission	Amendments proposed by the ECB[2]
immovable property collateral" means an exposure secured by a mortgage on residential or commercial immovable property or secured by any other mechanisms other than mortgages but which are economically equivalent to mortgages and recognised as collateral on immovable property under the applicable national law setting out the conditions for the establishment of those mechanisms;'	immovable property", or "exposure secured by immovable property collateral" means an exposure secured by ~~a mortgage on~~ residential or commercial immovable property~~ or secured by any other mechanisms other than mortgages but which are economically equivalent to mortgages and recognised as collateral on immovable property under the applicable national law setting out the conditions for the establishment of those mechanisms~~;'
Explanation *Requiring mortgages or economic equivalent mechanisms is unjustifiably stricter than the Basel III standards, CRE20.69 of which does not require any specific way of securing exposures by immovable properties received as collateral. CRE20.71(2) of the Basel III standards abstractly requires that any claim on the property taken must be legally enforceable in all relevant jurisdictions. This requirement is already implemented by Article 208(2) of the CRR. Where this requirement together with all other applicable requirements is met, albeit in another way than a mortgage or an economic equivalent mechanism, it is not justifiable to deny recognition of the credit risk mitigation arising from the property value. For consistency, the term 'residential immovable property' should be used rather than 'residential property'.*	
Amendment 10 Article 4(1) of the CRR (new definition)	
No text	**'(153) "Securities financing transaction" means a transaction such as repurchase agreement, reverse repurchase agreement, security lending and borrowing, or margin lending transaction, where the value of the transaction depends on market valuations and the transaction may be subject to margin agreements.**'
Explanation *The ECB proposes to include a definition for securities financing transaction in Article 4(1) of the CRR because the term is used in Article 162(1). It is proposed to align the definition with the one included in footnote 17 of LEV30.36 of the Basel III standards.*	

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td colspan="2">Amendment 11
Point (2)(b) of Article 1 of the proposed regulation (Article 5(6) of the CRR)</td></tr>
<tr><td>‘(b)
[…]
(6) “facility” means a credit exposure arising from contract or a set of contracts between an obligor and an institution;
[…]’</td><td>‘(b)
[…]
(6) “facility” means a credit exposure arising from contract ~~or a set of contracts~~ between an obligor and an institution;
[…]’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The ECB proposes to remove ‘or a set of contracts’ since it might lead to unintended consequences. In particular, reference to ‘a set of contracts’ might allow the use of the concept of ‘sub-facilities’, which exists in some Member States, for the purpose of determining the level of estimation of risk parameters such as LGD and CCF, and also potentially probability of default (PD) if the definition of default is applied at the level of an individual facility. This practice would hamper the comparability of risk-weighted exposure amounts (RWEAs) across institutions.</td></tr>
<tr><td colspan="2">Amendment 12
Point (13) of Article 1 of the proposed regulation (Article 49(4) of the CRR)</td></tr>
<tr><td>‘(13)
[…]
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 %.’</td><td>‘(13)
[…]
4. The holdings in respect of which deduction is not made in accordance with paragraph**s** 1**, 2 or 3** 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 %.’~~</td></tr>
<tr><td colspan="2"><u>Explanation</u>
Holdings of own funds instruments of a financial sector entity are non-debt exposures conveying a subordinated, residual claim on the assets or income of the issuer of the own funds instrument. Such holdings meet the definition of equity exposures in Article 133(1)(a) of the CRR. In contrast to senior and less subordinated claims, being subordinated with solely a residual claim increases the loss risk if the issuer defaults. Such claims will only be satisfied to the extent to which there are still assets or income of the issuer remaining after all senior and less subordinated claims on the issuer have been satisfied.</td></tr>
</table>

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td colspan="2">This increased loss risk is not affected, and therefore in particular not mitigated, by the circumstance that the issuer of the own funds instrument is included in the same scope of consolidated supervision or is a member of the same institutional protection scheme. This was already acknowledged by the wording of the current Article 49(4) of the CRR which requires risk weights to be applied under the Standardised Approach or internal ratings based (IRB) approach without any adjustment. It is therefore not justifiable to introduce a separate risk weight for these equity exposures.
Moreover, CRE20.57 of the Basel III standards has quantified the loss risk of equity exposures by a risk weight of at least 250%, with the exception only of certain legislated programmes under strict risk-mitigating conditions according to CRE20.59. It is therefore not justifiable to apply a deviating risk weight of 100% for these types of equity exposures. Moreover, this risk weight is as low as that for senior claims on an unrated issuer. This can significantly underestimate the loss risk of these equity exposures that results from just having a subordinated residual claim.
This calibration under the Basel III standards has closed a material gap under the previous Standardised Approach for credit risk where, unlike for the IRB Approach, the increased riskiness from being subordinated had not been considered for the applicable risk weights. It is therefore not justifiable to leave this gap in risk coverage open, by maintaining the 100% that applied before to equity exposures according to Article 133 of the CRR.
Moreover, as all equity exposures of institutions applying the IRB Approach will be moved to the Standardised Approach for credit risk, no longer applying the risk weight for equity exposures but a 100% risk weight will unjustifiably reduce the own funds requirements, because the current simple risk weights for equity exposures are at least 290% according to Article 155(2) of the CRR, except for the 190% risk weight for private equity exposures in sufficiently diversified portfolios.</td></tr>
<tr><td colspan="2">Amendment 13
Point (23) of Article 1 of the proposed regulation (Article 92(3) of the CRR)</td></tr>
<tr><td>‘(23)
[…]
3. The total risk exposure amount shall be calculated as follows:
(a) a stand-alone institution in the EU and, for the purposes of complying with the obligations of this Regulation on the basis of its consolidated situation in accordance with Part One, Title II, Chapter 2, an EU parent institution, an EU parent financial holding company and an EU parent mixed financial holding company shall calculate the total risk exposure amount as follows:</td><td>‘(23)
[…]
3. The total risk exposure amount shall be calculated as follows:
(a) a stand-alone institution in the EU and, for the purposes of complying with the obligations of this Regulation on the basis of its consolidated situation in accordance with Part One, Title II, Chapter 2, an EU parent institution, an EU parent financial holding company and an EU parent mixed financial holding company shall calculate the total risk exposure amount as follows:</td></tr>
</table>

Text proposed by the European Commission	Amendments proposed by the ECB[2]
[…]	[…]
(b) for the purposes set out in points (i) and (ii), the total risk exposure amount shall be calculated in accordance with paragraph 6:	~~(b) for the purposes set out in points (i) and (ii), the total risk exposure amount shall be calculated in accordance with paragraph 6:~~
(i) in case of a stand-alone subsidiary institution in a Member State, for the purposes of complying with obligations of this Regulation on its individual basis;	~~(i) in case of a stand-alone subsidiary institution in a Member State, for the purposes of complying with obligations of this Regulation on its individual basis;~~
(ii) in case of a parent institution in a Member State, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State, for the purposes of complying with obligations of this Regulation on the basis of its consolidated situation;	~~(ii) in case of a parent institution in a Member State, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State, for the purposes of complying with obligations of this Regulation on the basis of its consolidated situation;~~
(c) for the purposes of complying with the obligations of this Regulation on an individual basis, the total risk exposure amount of an institution which is neither a stand-alone institution in the EU nor a stand-alone subsidiary institution in a Member State shall be the un-floored total risk exposure amount calculated in accordance with paragraph 4.	(~~c~~**b**) for the purposes of complying with the obligations of this Regulation **in any case other than the cases referred to in point (a) of this paragraph** ~~on an individual basis~~, the total risk exposure amount ~~of an institution which is neither a stand-alone institution in the EU nor a stand-alone subsidiary institution in a Member State~~ shall be the un-floored total risk exposure amount calculated in accordance with paragraph 4.
[…]	[…]
6. The total risk exposure amount of an entity “i” for the purposes set out in paragraph 3, point (b), shall be calculated as follows:	~~6. The total risk exposure amount of an entity “i” for the purposes set out in paragraph 3, point (b), shall be calculated as follows:~~
$TREA_i=U\text{-}TREA_i+DI^{conso}*Contrib_i^{conso}$	~~$TREA_i=U\text{-}TREA_i+DI^{conso}*Contrib_i^{conso}$~~
where:	~~where:~~
i = the index that denotes the entity;	~~i = the index that denotes the entity;~~
$TREA_i$ = the total risk exposure amount of entity i;	~~$TREA_i$ = the total risk exposure amount of entity i;~~
$U\text{-}TREA_i$ = the un-floored total risk exposure amount of entity i calculated in accordance with paragraph 4;	~~$U\text{-}TREA_i$ = the un-floored total risk exposure amount of entity i calculated in accordance with paragraph 4;~~
DI^{conso} = any positive difference between the total risk exposure amount and the un-floored total risk exposure amount for the consolidated situation of the EU parent institution, EU parent financial	~~DI^{conso} = any positive difference between the total risk exposure amount and the un-floored total risk exposure amount for the consolidated situation of~~

Text proposed by the European Commission	Amendments proposed by the ECB[2]
holding company or EU parent mixed financial holding company of the group that entity i is part of, calculated as follows: $DI^{conso} = TREA - U\text{-}TREA$ where: U-TREA = the un-floored total risk exposure amount calculated in accordance with paragraph 4 for that EU parent institution, EU parent financial holding company or EU parent mixed financial holding company on the basis of its consolidated situation; TREA = the total risk exposure amount calculated in accordance with paragraph 3, point (a), for that EU parent institution, EU parent financial holding company or EU parent mixed financial holding company on the basis of its consolidated situation. $Contrib_i^{conso}$ = the contribution of entity i, calculated as follows: $Contrib_i^{conso}$= $(F\text{-}TREA_i - U\text{-}TREA_i) / \Sigma_j(F\text{-}TREA_j - U\text{-}TREA_j)$, if $(F\text{-}TREA_j - U\text{-}TREA_j) > 0$ 0, *otherwise* where: j = the index that denotes all entities that are part of the same group as entity i for the consolidated situation of the EU parent institution, EU parent financial holding company or EU parent mixed financial holding company; $U\text{-}TREA_j$ = the un-floored total risk exposure amount calculated by entity j in accordance with paragraph 4 on the basis of its consolidated situation or, in case entity j is a stand-alone subsidiary institution in a Member State, on its individual basis; $F\text{-}TREA_j$ = the floored total risk exposure amount of entity j calculated on the basis of its consolidated situation as follows: $F\text{-}TREA_j = \max\{U\text{-}TREA_j ; x * S\text{-}TREA_j\}$ where:	~~the EU parent institution, EU parent financial holding company or EU parent mixed financial holding company of the group that entity i is part of, calculated as follows:~~ ~~$DI^{conso} = TREA - U\text{-}TREA$~~ ~~where:~~ ~~U-TREA = the un-floored total risk exposure amount calculated in accordance with paragraph 4 for that EU parent institution, EU parent financial holding company or EU parent mixed financial holding company on the basis of its consolidated situation;~~ ~~TREA = the total risk exposure amount calculated in accordance with paragraph 3, point (a), for that EU parent institution, EU parent financial holding company or EU parent mixed financial holding company on the basis of its consolidated situation.~~ ~~$Contrib_i^{conso}$ = the contribution of entity i, calculated as follows:~~ ~~$Contrib_i^{conso}$=~~ ~~$(F\text{-}TREA_i - U\text{-}TREA_i) / \Sigma_j(F\text{-}TREA_j - U\text{-}TREA_j)$, if $(F\text{-}TREA_j - U\text{-}TREA_j) > 0$~~ ~~0, *otherwise*~~ ~~where:~~ ~~j = the index that denotes all entities that are part of the same group as entity i for the consolidated situation of the EU parent institution, EU parent financial holding company or EU parent mixed financial holding company;~~ ~~$U\text{-}TREA_j$ = the un-floored total risk exposure amount calculated by entity j in accordance with paragraph 4 on the basis of its consolidated situation or, in case entity j is a stand-alone subsidiary institution in a Member State, on its individual basis;~~ ~~$F\text{-}TREA_j$ = the floored total risk exposure amount of entity j calculated on the basis of its consolidated situation as follows:~~ ~~$F\text{-}TREA_j = \max\{U\text{-}TREA_j ; x * S\text{-}TREA_j\}$~~

Text proposed by the European Commission	Amendments proposed by the ECB[2]
F-TREA$_j$ = the floored total risk exposure amount calculated by entity j on the basis of its consolidated situation or, in case entity j is a stand-alone subsidiary institution in a Member State, for its individual basis;	~~where:~~ ~~F-TREA$_j$ = the floored total risk exposure amount calculated by entity j on the basis of its consolidated situation or, in case entity j is a stand-alone subsidiary institution in a Member State, for its individual basis;~~
S-TREA$_j$ = the standardised total risk exposure amount calculated in accordance with paragraph 5 by entity j on the basis of its consolidated situation or, in case entity j is a stand-alone subsidiary institution in a Member State, for its individual basis;	~~S-TREA$_j$ = the standardised total risk exposure amount calculated in accordance with paragraph 5 by entity j on the basis of its consolidated situation or, in case entity j is a stand-alone subsidiary institution in a Member State, for its individual basis;~~
x = 72,5 %.	~~x = 72,5 %.~~
[…]’	[…]’

<u>*Explanation*</u>

The output floor should be applied at the highest level of consolidation only.

Under a formal application of the Basel III standards, the output floor would apply at any level within a group where group members use internal models for determining own funds requirements. For the CRR this would result in applying an output floor also at the individual basis of each group member because, instead of full sub-consolidation at every tier within a banking group, the EU has chosen to implement the alternative permitted by footnote 1 to SCO10.3 of the Basel III standards.

In substance, however, any application below the top-consolidated basis could result in being stricter than intended by the Basel III standards, and could cause adverse effects for risk management within a group. The output floor has been calibrated based on data for the top-consolidated basis of each banking group. This data reflects, however, that internal models in practice are never applied to the whole portfolio but are accompanied by some partial use of Standardised Approaches for those sub-portfolios for which banks cannot develop reliable models given the lack of sufficient data points. Any use of Standardised Approaches reduces the amount of additional own funds, if any, which banks need for complying with the output floor, because the output floor solely requires a fraction of those own funds which banks anyway need to have under the Standardised Approaches. These accepted compensation effects are the same for a standalone bank and for the top-consolidated basis of a banking group.

However, unlike for a standalone bank for which the allocation of tasks to different departments does not affect the own funds requirements, compensation effects from Standardised Approaches are reduced or even cease to exist in groups with specialised task allocation. Models-based approaches might only be used by some specialised group members, whereas other group members might only apply Standardised Approaches. Applying the output floor separately to a group member mainly using internal models could, given the lack of compensation effects from Standardised Approaches, cause an extraordinary increase in own funds requirements beyond the intended calibration of the output floor.

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Moreover, group members not using any models would also not benefit from compensation effects, because they are not affected by the output floor. As a result, the output floor impact could be much stronger for groups than for standalone banks. *At first glance, the extraordinary impact on group members using models might seem both justifiable and desirable given that this is where the risks could be underestimated. In practice, however, groups could escape this impact by reallocating business activities across group members to achieve full compensation effects for the individual basis of each group member. Instead of limiting the use of models to sufficiently sophisticated group members, each group member could be assigned the same mixture of tasks like a standalone bank, including some use of models but compensated for the output floor impact by some use of Standardised Approaches. As a result, even group members with little or no experience with internal models would calculate their own funds requirements based on internal models.* *Such reallocation of business activities within a group to escape an extraordinary impact of the output floor could raise concerns with regard to sound risk management both for the whole group and for individual group members. Addressing such concerns would have required a different design of the output floor with a calibration directly targeted to the scope of models only which, however, is not the design envisaged by the Basel III standards.*	
Amendment 14 Point (26) of Article 1 of the proposed regulation (Article 104(2) of the CRR)	
'(26) […] 2. […] For the purposes of point (i), an institution shall split the embedded option from its own liability or from the other instrument in the non-trading book that relate to credit or equity risk and shall assign, the own liability or the other instrument to the trading or to the non-trading book, as appropriate, in accordance with this Article. […]'	'(26) […] 2. […] For the purposes of point (i), an institution shall split the embedded option from its own liability or from the other instrument in the non-trading book that relate to credit or equity risk**. It shall assign the embedded option to the trading book** ~~and shall assign~~ **and shall leave** the own liability or the other instrument **in** ~~to the trading or to~~ the non-trading book~~, as appropriate, in accordance with this Article~~. […]'
<u>*Explanation*</u> *In line with the Basel III standards the proposed point (i) of Article 104(2) should specify a treatment for options or other derivatives embedded in instruments allocated to the non-trading book. It should only clarify that respective embedded options or derivatives should be split from the overall instrument and*	

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td colspan="2">allocated to the trading book. In line with the Basel III standards this should not imply that the non-derivative host instrument can be potentially reallocated. Therefore, the ECB proposes clarifying that the instrument, from which the embedded option or derivative has been split, should remain in the non-trading book.</td></tr>
<tr><td colspan="2">Amendment 15
Point (30)(c) of Article 1 of the proposed regulation (Article 106(5) of the CRR)</td></tr>
<tr><td>‘(30)(c)
[…]
5. … where the following conditions are met:
(a) to calculate the own funds requirements for market risk using the approaches referred to in Article 325(1), points (a), (b) and (c), the interest rate risk position has been assigned to a separate portfolio from the other trading book positions, the business strategy of which is solely dedicated to manage and mitigate the market risk of internal hedges of interest rate risk exposure; for that purpose;
(b) for the purposes of calculating the own funds requirements for market risk using the approaches referred to in Article 325(1), point (b), the position has been assigned to a trading desk established in accordance with Article 104b the business strategy of which is solely dedicated to manage and mitigate the market risk of internal hedges of interest rate risk exposure;
[…]’</td><td>‘(30)(c)
[…]
5. … where the following conditions are met:
(a) to calculate the own funds requirements for market risk using the approaches referred to in Article 325(1), points (a), (b) and (c), the interest rate risk position has been assigned to a separate portfolio from the other trading book positions, the business strategy of which is solely dedicated to manage and mitigate the market risk of internal hedges of interest rate risk exposure; ~~for that purpose;~~
(b) ~~for the purposes of~~ to calculate ~~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;
[…]’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The ECB proposes the deletion of the words ‘for that purpose’ as they appear to be redundant and the alignment of the start of the sentence in point (b) to point (a).</td></tr>
<tr><td colspan="2">Amendment 16
Point (40) of the proposed regulation (Article 122(2) of the CRR)</td></tr>
</table>

Text proposed by the European Commission	Amendments proposed by the ECB[2]
‘(40) […] (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%.”;’	‘(40) […] (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%**, except for exposures to SMEs as defined in Article 5 point (8) which shall be assigned a risk weight of 85%.**”;’
<u>*Explanation*</u> *The ECB proposes this amendment as a consequence of the amendment to Article 501 of the CRR as explained in Amendment 84.*	
Amendment 17 Point (41) of Article 1 of the proposed regulation (Article 122a(3)(a) of the CRR)	
‘(41) […] 3. Specialised lending exposures for which a directly applicable credit assessment is not available shall be risk weighted as follows: (a) where the purpose of a specialised lending exposure is to finance the acquisition of physical assets, including ships, aircraft, satellites, railcars, and fleets, and the income to be generated by those assets comes in the form of cash flows generated by the specific physical assets that have been financed and pledged or assigned to the lender by one or several third parties (“object finance exposures”), institutions shall apply the following risk weights: […]’	‘(41) […] 3. Specialised lending exposures for which a directly applicable credit assessment is not available shall be risk weighted as follows: (a) where the purpose of a specialised lending exposure is to finance the acquisition of physical assets, including ships, aircraft, satellites, railcars, and fleets, and the income to be generated by those assets comes in the form of cash flows generated by the specific physical assets that have been financed and pledged or assigned to the lender ~~by one or several third parties~~ (“object finance exposures”), institutions shall apply the following risk weights: […]’
<u>*Explanation*</u> *It is neither necessary nor feasible in practice that the financed physical assets are pledged or assigned by third parties.* *Only the owner of the financed physical assets is legally able to pledge or assign these assets to the lender. Point (a) of the definition of specialised lending in Article 122a(1) of the CRR requires that the exposure is to an entity which was created specifically to finance or operate physical assets, or is an*	

Text proposed by the European Commission	Amendments proposed by the ECB[2]
economically comparable exposure. As obligor, this entity is not a third party. Thus, where this entity is also the owner of the financed physical assets, these assets would not be pledged by a third party. The consequence would be that such exposures would not be risk-weighted as object finance exposures, and therefore could only be risk-weighted as general corporates exposures. This would not be compliant with CRE20.49(2) of the Basel III standards which does not exempt such exposures from classification as object finance, but applies this classification to any case where the financed assets have been pledged or assigned to the lender. *The reference to third parties seems to be intended to require repayment primarily from income generated by the financed assets, in particular from renting or leasing these assets to third parties or being paid by third parties for operating these assets, rather than from the independent capacity of a broader commercial enterprise. This, however, is already one of the conditions for being a specialised lending exposure, according to point (d) of Article 122a(1) of the CRR, and therefore does not need to be required again for defining which specialised lending exposures qualify as object finance exposures.*	
Amendment 18 Point (41) of Article 1 of the proposed regulation (Article 122a(3)(a) of the CRR)	
‘(41) […] 3. […] (a) ..., institutions shall apply the following risk weights: (i) 80 % where the exposure is deemed to be high quality when taking into account all of the following criteria: [...] (ii) 100% where the exposure is not deemed to be high quality as referred to in point (i);’	‘(41) […] 3. […] (a) ..., institutions shall apply ~~the following~~ a risk weight of 100%.~~weights:~~ ~~(i) 80 % where the exposure is deemed to be high quality when taking into account all of the following criteria:~~ [...] ~~(ii) 100% where the exposure is not deemed to be high quality as referred to in point (i);~~’
<u>*Explanation*</u> *An 80% risk weight for ‘high quality’ object finance exposures is not compliant with the Basel III standards, because CRE20.51(1) requires a 100% risk weight for all object finance exposures under the Standardised Approach for credit risk.* *Not complying with this requirement is also not justifiable by the criteria for being ‘high quality’ set out in Article 122a(3)(a)(i) of the CRR. These criteria seem to be derived from the ‘strong’ category for object finance under the IRB supervisory slotting approach, transposed by category 1 in Table 1 of Article*	

Text proposed by the European Commission	Amendments proposed by the ECB[2]
153(5) of the CRR, for which the criteria are set out in CRE33.15 of the Basel III standards. However, the IRB slotting approach requires the prior approval of an institution's model for deriving from these criteria the risk weight category to which the finance project is assigned. *Several of these criteria rely on an institution's own judgements, by using terms like 'adequate', 'conservative', 'low refinancing risk', 'has restrictions', 'properly managed'. Relying on internal assessments of an institution conflicts with the very purpose of the Standardised Approach because, unlike for the IRB slotting approach, the institution has not demonstrated its ability to assess these criteria to the satisfaction of the competent authority.* *Other criteria for 'high quality' solely require general features typical for specialised lending such as first ranking rights over financed assets and generated income, or that any necessary permits and authorisation for the operation of the assets have been obtained. This is not, however, sufficient for assuming a generally lower risk for the purposes of the regulatory risk weights under the Standardised Approach.*	
Amendment 19 Point (41) of Article 1 of the proposed regulation (Article 122a(3)(c) of the CRR)	
'(41) […] 3. […] (c) where the purpose of a specialised lending exposure is to finance a project for the development or acquisition of large, complex and expensive installations, including power plants, chemical processing plants, mines, transportation infrastructure, environment, and telecommunications infrastructure, and the income to be generated by the project is the money generated by the contracts for the output of the installation obtained from one or several parties which are not under management control of the sponsor ("project finance exposures"), institutions shall apply the following risk weights: […]'	'(41) […] 3. […] (c) where the purpose of a specialised lending exposure is to finance a **single** project**, either in the form of construction of a new capital installation or refinancing of an existing installation, with or without improvements, in particular projects for** the development or acquisition of large, complex and expensive installations, including power plants, chemical processing plants, mines, transportation infrastructure, environment, and telecommunications infrastructure, and the income to be generated by the **financed** project ~~is the money generated by the contracts for the output of the installation obtained from one or several parties which are not under management control of the sponsor~~ **serves both as the primary source of repayment and as security for the loan** ("project finance exposures"), institutions

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td></td><td>shall apply the following risk weights:
[…]'</td></tr>
<tr><td colspan="2">

<u>*Explanation*</u>

The fact that the generated income for a financed project is obtained from parties under management control of a sponsor does not justify exempting that financed project from the definition of project finance exposures. This does not prevent the specific risks of specialised lending exposures which, according to the criterion in Article 122a(1)(d) of the CRR, arise from the fact that 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. Where this criterion is met together with the other criteria in Article 122a(1) of the CRR, the exposure constitutes a specialised lending exposure irrespective of whether the income generated by the project being financed is obtained from parties under the management control of a sponsor. Excluding such exposures from the definition of 'project finance exposures' would unjustifiably result in not applying any risk weight for specialised lending exposures to exposures from financed projects for which no directly applicable credit assessment by a nominated external credit assessment institution (ECAI) is available, because a financed project neither meets the criteria for 'object finance exposures' in Article 122a(3)(a) of the CRR nor for 'commodities finance exposures' in Article 122a(3)(b) of the CRR. The consequence would be that only the 100% risk weight for exposures to unrated corporates according to Article 122(2) of the CRR could be applied. This would, however, unjustifiably disregard the increased riskiness of financed projects that are not yet operational and therefore have not yet generated the net positive income necessary for repaying the obtained financing, for which CRE20.51(2) of the Basel III standards requires a risk weight of 130%. Thus, this would be non-compliant with the Basel III standards.

Further, the definition of 'project finance exposures' solely refers to the examples which CRE20.49(1) of the Basel III standards mentions as cases for which project finance is usual, but does not specify the general criteria for project finance. These examples are neither an exhaustive list of cases of project finance, nor does the financing in these examples always need to meet the criteria of project finance. It is therefore necessary to instead define 'project finance exposures' using the same general criteria as CRE20.49(1) of the Basel III standards, which defines 'project finance' as 'the method of funding in which the lender looks primarily to the revenues generated by a single project, both as the source of repayment and as security for the loan.'

</td></tr>
</table>

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Amendment 20 Point (41) of Article 1 of the proposed regulation (Article 122a(3)(c)(ii) of the CRR)	
'(41)	'(41)
[…]	[…]
3.	3.
[…]	[…]
(c)	(c)
[…]	[…]
(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:	(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;	– there are contractual restrictions on the ability of the obligor to perform activities that may be detrimental to lenders, including the restriction that new debt cannot be issued without the consent of existing debt providers;
– the obligor has sufficient reserve funds fully funded in cash, or other financial arrangements, with highly rated guarantors to cover the contingency funding and working capital requirements over the lifetime of the project being financed;	– the obligor has sufficient reserve funds fully funded in cash, or other financial arrangements~~, with highly rated guarantors~~ to cover the contingency funding and working capital requirements over the lifetime of the project being financed;
– the obligor generates cash flows that are predictable and cover all future loan repayments;	– ~~the obligor generates cash flows that are predictable and cover all future loan repayments~~ **the income generated by the financed project is availability-based or subject to a rate-of-return regulation or take-or-pay contract; for this purpose "availability-based" means that, once construction is completed, the obligor is entitled, as long as contract conditions are fulfilled, to payments from its contractual counterparties which cover**
– 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	

Text proposed by the European Commission	Amendments proposed by the ECB[2]
% in accordance with Articles 114 and 115, or are assigned an ECAI rating with a credit quality step of at least 3; • a public sector entity, provided that that entity is assigned a risk weight of 20 % or below in accordance with Article 116, or is assigned an ECAI rating with a credit quality step of at least 3; • a corporate entity which has been assigned an ECAI rating with a credit quality step of at least 3. – the contractual provisions governing the exposure to the obligor provide for a high degree of protection for the lending institution in case of a default of the obligor; – the contractual arrangements effectively protect the lending institution against losses resulting from the termination of the project; – all assets and contracts necessary to operate the project have been pledged to the lending institution to the extent permitted by applicable law; – equity is pledged to the lending institution such that they are able to take control of the obligor entity upon default; […]'	**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**; – the source of repayment of the obligation depends on one main counterparty and that main counterparty is one of the following: • a central bank, a central government, a regional government or a local authority, provided that they are assigned a risk weight of 0 % in accordance with Articles 114 and 115, or are assigned an ECAI rating with a credit quality step of at least 3; • a public sector entity, provided that that entity is assigned a risk weight of 20 % or below in accordance with Article 116, or is assigned an ECAI rating with a credit quality step of at least 3; • a corporate entity which has been assigned an ECAI rating with a credit quality step of at least 3. – the contractual provisions governing the exposure to the obligor provide for a high degree of protection for the lending institution in case of a default of the obligor; – the ~~contractual arrangements~~ **main counterparty or other counterparties which meet the eligibility criteria for the main counterparty** effectively protect the lending institution against losses resulting from the termination of the

Text proposed by the European Commission	Amendments proposed by the ECB[2]
	project; – all assets and contracts necessary to operate the project have been pledged to the lending institution to the extent permitted by applicable law; – ~~equity is pledged to~~ the lending institution ~~such that they are~~ **is** able to take control of the obligor entity ~~upon~~ **in case of a** default **event**; […]’

<u>*Explanation*</u>

The cross reference to Article 501a of the CRR should be deleted as a consequence of the proposed deletion of Article 501a as explained in Amendment 85.

Several of the criteria for ‘high quality’ project financing deviate materially from the criteria required by CRE20.52 of the Basel III standards. These criteria should be aligned with the criteria for ‘high quality project finance’ for which the Basel III standards allow an 80% risk weight. This lower risk weight has the same rationale that underlies the introduction of the infrastructure supporting factor under Article 501a of the CRR. Recital 61 of Regulation (EU) 2019/876 of the European Parliament and the Council[6] justified this as follows: ‘In order to encourage private and public investments in infrastructure projects it is essential to lay down a regulatory environment that is able to promote high quality infrastructure projects and reduce risks for investors. In particular, own funds requirements for exposures to infrastructure projects should be reduced, provided they comply with a set of criteria able to reduce their risk profile and enhance predictability of cash flows. …’ The set of criteria required by CRE20.52 of the Basel III standards exhaustively identifies the project finance exposures for which the Basel Committee found sufficient empirical evidence for a reduced risk profile and enhanced predictability of cash flows.

The criteria in Article 122a(3)(c)(ii) need to be corrected for the following aspects:

- *Second criterion: the requirement to have a financial arrangement with a highly rated guarantor to cover the contingency funding and working capital requirements does not make sense because guarantors do not provide liquidity or working capital but solely cover the losses arising from a default event. Thus, it is likely that this criterion is also not met in practice. CRE20.52(2) of the Basel III standards requires financial arrangements but does not require these arrangements to be with a guarantor. Relying on guarantors conflicts with the very purpose of the requirement for financial arrangements, the purpose of which is not to cover*

6 Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investments undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150, 7.6.2019, p.1).

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td colspan="2">default events but, on the contrary, to prevent default events by ensuring contingency funding and working capital requirements over the lifetime of the project being financed.
• Third criterion: the reference to the need for cash flows to be generated by an obligor should instead refer to cash flows generated by the financed project. It is the latter that are the relevant cash flows given the primary source of repayment of the obligation related to the exposure is the cash flows generated by the financed project, as required by Article 122a(1)(d) of the CRR for the classification as a specialised lending exposure. More importantly, CRE20.52(3) of the Basel III standards does not rely on an institution’s assessment of predictability and sufficiency of cash flows, but specifies how this must be achieved. The acknowledged ways of reliable income generation are being ‘availability-based’ or being subject to a ‘rate-of-return regulation’ or ‘take-or-pay contract’.
• Sixth criterion: it is not sufficient to only require in general that the contractual provisions protect effectively against losses from termination of the project. Relying on the judgment of the lending institution is not justifiable for a Standardised Approach. CRE20.52(6) of the Basel III standards requires specifically that the protection against losses from termination of the project must be provided by the main counterparty or other counterparties which similarly comply with the eligibility criteria for the main counterparty.
• Eighth criterion: pledged equity is neither necessary nor sufficient for ensuring that the lending institution is able to take control of the obligor entity in case of default, as required by CRE20.52(8) of the Basel III standards. Equity pledged as collateral solely constitutes a (sub-subordinated) residual claim on the assets and income of the obligor, but ownership in such equity does not always result in control, which according to Article 22 of Directive 2013/34/EU of the European Parliament and of the Council[7] requires a majority of the voting rights or other ways of exercising a dominance influence over an entity.</td></tr>
<tr><td colspan="2">Amendment 21
Point (42) of Article 1 of the proposed regulation (Article 123(1) of the CRR)</td></tr>
<tr><td>‘(42)
[…]
1. Exposures that comply with all of the following criteria shall be considered retail exposures:
(a) the exposure is either of the following:
(i) an exposure to one or more natural</td><td>‘(42)
[…]
1. Exposures that comply with all of the following criteria shall be considered retail exposures:
(a) ~~the exposure is either of the following:~~ the total exposure value aggregated</td></tr>
</table>

[7] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

Text proposed by the European Commission	Amendments proposed by the ECB[2]
persons; (ii) an exposure to an SME within the meaning of Article 5, point (8), where the total amount owed to the institution, its parent undertakings and its subsidiaries, by the obligor or group of connected clients, including any exposure in default but excluding exposures secured by residential property up to the property value shall not, to the knowledge of the institution, which shall take reasonable steps to confirm the situation, exceed EUR 1 million; (b) [...] (c) [...]’	**across all exposures to** ~~(i) an exposure to one or more natural persons;~~ ~~(ii) an exposure to an SME within the meaning of Article 5, point (8), where the total amount owed to the institution, its parent undertakings and its subsidiaries, by~~ the obligor or group of connected clients, including any exposure in default but excluding exposures secured by residential property up to the property value, shall not, to the knowledge of the institution, which shall take reasonable steps to confirm the situation, exceed EUR 1 million; (b) [...] (c) [...] **Where any of these criteria are not met for an exposure to one or more natural persons, the risk weight shall be 100%.** […]’

<u>*Explanation*</u>

The 75% weight for ‘regulatory retail’ reflects the credit risk of exposures for which, amongst other criteria, the maximum aggregated exposure to the obligor is relatively low. CRE20.65 of the Basel III standards allows a maximum aggregated exposure of EUR 1 million not only for exposures to small and medium-sized enterprises (SMEs) but also to natural persons. Where this threshold is exceeded for an individual natural person or group of natural persons, or where any of the other criteria for ‘regulatory retail’ is not met, CRE20.67 of the Basel III standards requires a classification as ‘other retail’, for which, CRE20.68(3) of the Basel III standards requires a 100% risk weight.

The omission of the EUR 1 million threshold for natural persons might have been intended for aligning with the IRB retail definition. However, the IRB retail definition serves a different purpose, in particular related to assigning risk parameter estimates to a pool of exposures. For this purpose, CRE30.22(1) of the Basel III standards requires in particular that the exposure must be one of a large pool of exposures, which are managed by the bank on a pooled basis. This pool management criterion does not apply under the Standardised Approach. Consequently, this is not a reason for not applying the EUR 1 million threshold for the 75% risk weight for exposures to a natural person or group of natural persons.

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Further, the amount owed to the institution and other group members can understate but also overstate the aggregated exposure value. The amount owed completely disregards the exposure values of off-balance sheet exposures such as undrawn amounts of credit facilities, which could understate the aggregated exposure value where the percentage of the nominal value is above 0% according to points (a) to (c) of Article 111(1) of the CRR. This would unjustifiably apply the 75% risk weight to exposures where the aggregated exposure exceeds the EUR 1 million retail threshold. On the other hand, the exposure value of an on-balance sheet exposure can be less than the amount owed because Article 111(1) of the CRR determines the exposure value solely as the accounting value that remains after credit risk adjustments and several other adjustments. This could unjustifiably apply the higher risk weight of 100% for 'other retail' exposures to natural persons or for general corporates exposures where actually the aggregated exposure values do not exceed the EUR 1 million retail threshold.	
Amendment 22 Point (42) of Article 1 of the proposed regulation (Article 123(4) of the CRR)	
'(42) […] 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 underwritten by the borrower 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	'(42) […] ~~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 underwritten by the borrower 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~~

Text proposed by the European Commission	Amendments proposed by the ECB[2]
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.’	~~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.~~’

<u>Explanation</u>

The Basel III standards do not allow a 35% risk weight for exposures to natural persons. CRE20.67 of the Basel III standards requires all exposures to natural persons to be treated as ‘other retail’ where not all of the criteria for ‘regulatory retail’ are met. CRE20.68 of the Basel III standards assigns for ‘regulatory retail’ a risk weight of either 45% in case of transactors or otherwise 75%, whereas the risk weight for ‘other retail’ is 100%.

The fact that the lending institution is entitled to receive payments directly out of the loan or the pension of the obligor, in combination with limiting the aggregate loans to 20% of the net monthly income, does not justify a lower risk weight than for other senior claims. Credit obligations could still fail to be met, including in particular but not limited to circumstances where e.g. there has been a change of job which has a lower income, there is a legally protected minimum subsistence level which prevents the lending institution from enforcing credit obligations which are due or the obligor becomes unemployed or dies.

Also the required insurance policy underwritten to the benefit of the institution does not justify reducing the risk weight across the board to 35%. Recognising such insurance policy under the Standardised Approach is possible but only where the specific terms and conditions meet the criteria for eligible credit risk mitigation. Meeting these eligibility criteria also does not justify a flat 35% risk weight, but simply permits the application of the respective approach for eligible credit risk mitigation, either as unfunded credit protection by the insurance firm or, in case of pledged life insurance policies, using the risk weights in accordance with Article 232(3) of the CRR which are derived from senior unsecured exposure to the undertaking providing the life insurance.

Amendment 23

Point (43) of Article 1 of the proposed regulation (Article 123a(1) of the CRR)

Text proposed by the European Commission	Amendments proposed by the ECB
‘(43) […] 1. Exposures to natural persons assigned to any of the exposures classes laid down in point (h) or (i) of Article 112, the risk weight assigned in accordance with Chapter 2 shall be multiplied by a factor of 1,5, whereby the resulting risk weight shall not be higher than 150 %, where the following conditions are met. […]’	‘(43) […] 1. ~~Exposures~~ **Where the following conditions are met for an exposure to a natural person or** natural persons **which is** assigned to the exposure class laid down in point (h) or**, if it is secured by residential immovable property, which is assigned to the exposure class laid down in** (i) of Article 112, the risk weight assigned **to that exposure** in accordance with Chapter 2

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td></td><td>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~~.
[…]’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
CRE20.92 of the Basel III standards requires the 1,5 multiplier to be applied only to RRE exposures, whereas referring to the whole exposure class would unjustifiably extend this to commercial real estate exposures.</td></tr>
<tr><td colspan="2">Amendment 24
Point (44) of Article 1 of the proposed regulation (Article 124(2) of the CRR)</td></tr>
<tr><td>‘(44)
[…]
2. A non-ADC exposure secured by an immovable property, where all the conditions laid down in paragraph 3 are met and, shall be treated as follows:
(a) where the exposure is secured by a residential property, the exposure shall not qualify as an IPRE exposure and shall be treated in accordance with Article 125(1) where the exposure meets any of the following conditions:
(i) the immovable property securing the exposure is the obligor’s primary residence, either where the immovable property as a whole constitutes a single housing unit or where the immovable property securing the exposure is a housing unit that is a separated part within an immovable property;
(ii) the exposure is to an individual and is secured by an income-producing residential housing unit, either where the immovable property as a whole constitutes a single housing unit or where the housing unit is a separated part within the immovable property, and total exposures</td><td>‘(44)
[…]
2. A non-ADC exposure secured by an immovable property, where all the conditions laid down in paragraph 3 are met~~ and~~, shall be treated as follows:
(a) where the exposure is secured by a residential property, the exposure ~~shall not qualify as an IPRE exposure and~~ shall be treated in accordance with Article 125(1) where the exposure meets any of the following conditions:
(i) the exposure does not qualify as IPRE;
~~(i)~~(ii) the immovable property securing the exposure is the obligor’s primary residence, either where the immovable property as a whole constitutes a single housing unit or where the immovable property securing the exposure is a housing unit that is a separated part within an immovable property;
~~(ii)~~(iii) the exposure is to an individual and is secured by an income-producing residential housing unit, either where the immovable property as a whole constitutes a single housing unit or where the housing</td></tr>
</table>

Text proposed by the European Commission	Amendments proposed by the ECB[2]
of the institution to that individual are not secured by more than four immovable properties, including those which are not residential properties or which do not meet any of the criteria in this point, or separate housing units within immovable properties; (iii) the exposure secured by residential property is to associations or cooperatives of individuals that are regulated by law and solely exist to grant their members the use of a primary residence in the property securing the loans; (iv) the exposure is secured by residential property to public housing companies or not-for-profit associations that are regulated by law and exist to serve social purposes and to offer tenants long-term housing; (b) where the exposure is secured by residential property and the exposure does not meet any of the conditions laid down in point (a), points (i) to (iv), the exposure shall be treated in accordance with Article 125(2); […]’	unit is a separated part within the immovable property, and total exposures of the institution to that individual are not secured by more than four immovable properties, including those which are not residential properties or which do not meet any of the criteria in this point, or separate housing units within immovable properties; ~~(iii)~~**(iv)** the exposure secured by residential property is to associations or cooperatives of individuals that are regulated by law and solely exist to grant their members the use of a primary residence in the property securing the loans; ~~(iv)~~**(v)** the exposure is secured by residential property to public housing companies or not-for-profit associations that are regulated by law and exist to serve social purposes and to offer tenants long-term housing; (b) where the exposure is secured by residential property and the exposure does not meet any of the conditions laid down in point (a), points (i) to ~~(iv)~~**(v)**, the exposure shall be treated in accordance with Article 125(2); […]’

Explanation

Article 125(1)(a) of the CRR limits the scope of the weights for non-income producing real estate (non-IPRE) exposures to only those exposures which meet any of the conditions in points (i) to (iv) of Article 124(2)(a) of the CRR. However, each of these conditions relates to cases which could meet the criteria for income producing real estate (IPRE) exposures, according to the definition in Article 4(1)(75b) of the CRR, but are exempted by the initial sentence of Article 124(2)(a) of the CRR from qualifying as IPRE exposures. As a consequence of this limited scope, the lower risk weights for non-IPRE would just not be applicable to genuine non-IPRE exposures. This would unjustifiably apply the higher risk weights for IPRE exposures according to Article 125(2) of the CRR to non-IPRE exposures which genuinely do not meet the definition of ‘IPRE exposure’ – which obviously cannot be intended.

Instead of excluding all the cases listed in Article 125(2)(a) of the CRR from being an IPRE exposure, being a non-IPRE exposure must constitute one of the cases for which the treatment in Article 125(1) of

Text proposed by the European Commission	Amendments proposed by the ECB[2]
the CRR applies, because this treatment just assigns the lower risk weights for non-IPRE exposures. As the most relevant case in practice, not being an 'IPRE exposure' should become the first case in the list. *The cases in points (i) to (iv) of Article 124(2)(a) of the CRR do just not constitute a subset of non-IPRE exposures, but are the cases for which CRE20.81 of the Basel III standards exceptionally allows a deviation from the IPRE definition in CRE20.79, which defines exposures that are 'materially dependent on cash flows generated by the property'. Thus, these are just the cases where the treatment for non-IPRE exposures according to Article 125(1) of the CRR applies despite the exposure meeting the definition of an IPRE exposure in Article 4(1)(75b) of the CRR.* *This exceptional treatment of selected non-IPRE exposures, despite repayment materially depends on the cash flows generated by the property, may be justifiable by a stronger interest of the obligor in continuing to meet the credit obligations when needed in case of insufficient cash flows generated by the property. Such stronger interest could exist where the residential immovable property is either the obligor's primary residence or has only a limited number of housing units as typical for units rented to family members, or where the obligor is a regulated association, cooperative, public housing company or not-for-profit association offering housing to individuals.*	
Amendment 25 Point (52) of Article 1 of the proposed regulation (Article 133(5) of the CRR)	
'(52) […] 5. Institutions that have received the prior permission of the competent authorities, may assign a risk weight of 100 % to equity exposures incurred under legislative programmes to promote specified sectors of the economy that comply with all of the following conditions: (a) the legislative programs provide significant subsidies, including in the form of guarantees by multilateral development banks, public development credit institutions as defined Article 429a(2) or international organisations, for the investment to the institution; (b) the legislative programs involve some form of government oversight; (c) such equity exposures in aggregate do not exceed 10 % of the institutions own funds.'	'(52) […] 5. Institutions that have received the prior permission of the competent authorities, may assign a risk weight of 100 % to equity exposures incurred under legislative programmes to promote specified sectors of the economy that comply with all of the following conditions: (a) the legislative ~~programs provide~~ **programme provides** significant subsidies, including in the form of guarantees by multilateral development banks, public development credit institutions as defined **under** Article 429a(2) or international organisations, for the investment to the institution; (b) the legislative ~~programs involve~~ **programme involves** some form of government oversight; (c) **the legislative programme involves**

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td></td><td>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 pertinent factors that limit the potential risk of the investment for the investing institution;
(d) such equity exposures in aggregate do not exceed 10 % of the ~~institutions~~ institution's own funds.'</td></tr>
<tr><td colspan="2"><u>Explanation</u>
Applying a risk weight of only 100% to equity investments under qualified legislative programmes requires a commensurate reduction in risk compared to other equity exposures to which a risk weight of at least 250% applies. Even significant subsidies combined with government oversight might not be sufficient to reduce the risk. CRE20.59 of the Basel III standards therefore requires restrictions on the equity investments and lists examples of such restrictions that are acknowledged to limit the potential risk of the investment for the investor.
Such a condition requiring restrictions on the equity investments is not new, but is already currently required by Article 150(1)(h) of the CRR, as one of the conditions that must be met for permanently applying the Standardised Approach for credit risk to exposures to equity investments under qualified legislative programmes. The 100% risk weight under the Standardised Approach according to CRE20.59 of the Basel III standards maintains this risk weight exposure under the same conditions. It is therefore necessary to also apply the condition of investment restrictions that limit the potential risk for the investor.</td></tr>
<tr><td colspan="2">Amendment 26
Point (58)(b) of Article 1 of the proposed regulation (Article 142(1), point (2) of the CRR)</td></tr>
<tr><td>'(b)
[…]
(2) "type of exposures" means a group of homogeneously managed exposures within an exposure class, which may be limited to a single entity or a single sub-set of entities within a group provided that the same type of exposures is managed differently in other entities of the group;'</td><td>'(b)
[…]
(2) "type of exposures" means a group of homogeneously managed exposures ~~within an exposure class~~, which may be limited to a single entity or a single sub-set of entities within a group provided that the same type of exposures is managed differently in other entities of the group;'</td></tr>
</table>

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td colspan="2"><u>Explanation</u>
The ECB proposes removing the reference to the exposure class in the definition of type of exposures. Otherwise, since the concept of type of exposures is then relevant for the definition of rating system, defined in paragraph 1 of the same Article 142, constraining institutions to define a rating system within an exposure class would trigger a high number of model changes, the costs of which for both institutions and competent authorities would outweigh, in the ECB's view, the benefits of the higher standardisation in the definition of type of exposure.</td></tr>
<tr><td colspan="2">Amendment 27
Article 142(1), point (7) of the CRR (new)</td></tr>
<tr><td>No text</td><td>'(7) "facility grade" means a risk category within a rating system's facility scale, to which exposures are assigned on the basis of a specified and distinct set of rating criteria, from which own estimates of ~~LGD~~ risk parameters are derived.'</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The ECB proposes to amend the definition laid down in Article 142(1), point (7) as a consequence of the amendments to Article 4(1)(78), Article 178 and Article 180(2)(a) of the CRR.</td></tr>
<tr><td colspan="2">Amendment 28
Point (62)(a) of Article 1 of the proposed regulation (Article 148(1) of the CRR)</td></tr>
<tr><td>'(a)
[…]
1. An institution that is permitted to apply the IRB Approach in accordance with Article 107(1), shall, together with any parent undertaking and its subsidiaries, implement the IRB Approach for at least one of the exposure classes referred to in points (a), (a1)(i), (a1)(ii), (b), (c)(i), (c)(ii), (c)(iii), (d)(i), (d)(ii), d(iii), (d)(iv), (e1), (f) and (g) of Article 147(2). Once an institution implements the IRB Approach for one of those exposure classes, it shall do so for all the exposures within that exposure class, unless it has received the permission of the competent authorities to use the Standardised Approach permanently in accordance with Article 150.</td><td>'(a)
[…]
1. An institution that is permitted to apply the IRB Approach in accordance with Article 107(1), shall, together with any parent undertaking and its subsidiaries, implement the IRB Approach for at least one of the exposure classes referred to in points (a), (a1)(i), (a1)(ii), (b), (c)(i), (c)(ii), (c)(iii), (d)(i), (d)(ii), d(iii), (d)(iv), (e1)~~(f)~~ and (g) of Article 147(2). Once an institution implements the IRB Approach for one of those exposure classes, it shall do so for all the exposures within that exposure class, unless it has received the permission of the competent authorities to use the Standardised Approach permanently in accordance with Article 150.</td></tr>
</table>

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td>[…]’</td><td>[…]’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The ECB proposes removing the reference to point (f) of Article 147(2) of the CRR. No permission can be granted to apply the IRB Approach for exposures covered in point (f) of Article 147(2). In fact, Article 151(10) of the CRR states: ‘The risk-weighted exposure amounts for securitised exposures and for exposures belonging to the exposure class referred to in point (f) of Article 147(2) shall be calculated in accordance with Chapter 5’.</td></tr>
<tr><td colspan="2">Amendment 29
Article 148(3) of the CRR (new)</td></tr>
<tr><td>No text</td><td>‘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 such that they ensure that the flexibility under paragraph 1 is not used selectively for the purposes of achieving reduced own funds requirements in respect of those exposure types or <s>exposure classes or</s> business units that are yet to be included in the IRB Approach or in the use of own estimates of LGDs and conversion factors.’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The ECB proposes a new amendment removing the reference to the ‘exposure classes’ by replacing Article 148(3) in light of the changes proposed to Article 148(1), and in particular the adoption of the IRB Approach for each exposure class (instead of all exposures), which make the reference to the exposure class in the context of the roll-out of the IRB Approach redundant. However, in order to ensure consistency between sub-paragraphs 2 and 3 of Article 148, instead of simply removing the reference to the concept of exposure classes, this reference is proposed to be replaced with the concept of “types of exposure”.</td></tr>
<tr><td colspan="2">Amendment 30
Point (63)(a) of Article 1 of the proposed regulation (Article 150(1) of the CRR)</td></tr>
</table>

Text proposed by the European Commission	**Amendments proposed by the ECB[2]**
'(a) […] 1. Institutions shall apply the Standardised Approach for all the following exposures: (a) exposures assigned to the equity exposure class referred to in Article 147(2), point (e); (b) exposures assigned to exposure classes for which institutions have decided not to implement the IRB Approach for the calculation of the risk-weighted exposure amounts and expected loss amounts; (c) exposures for which institutions have not received the prior permission of the competent authorities to use the IRB Approach for the calculation of the risk-weighted exposure amounts and expected loss amounts. An institution that is permitted to use the IRB Approach for the calculation of risk-weighted exposure amounts and expected loss amounts for a given exposure class may, subject to the competent authority's prior permission, apply the Standardised Approach for some types of exposures within that exposure class where those types of exposures are immaterial in terms of size and perceived risk profile. An institution that is permitted to use the IRB Approach for the calculation of risk-weighted exposure amounts for only some types of exposures within an exposure class, shall apply the Standardised Approach for the remaining types of exposures within that exposure class.'	'(a) […] 1. Institutions shall apply the Standardised Approach for all the following exposures: (a) exposures assigned to the equity exposure class referred to in Article 147(2), point (e); (b) exposures assigned to exposure classes for which institutions have decided not to implement the IRB Approach for the calculation of the risk-weighted exposure amounts and expected loss amounts; (c) exposures **assigned to exposure classes** for which institutions have not received the prior permission of the competent authorities to use the IRB Approach for the calculation of the risk-weighted exposure amounts and expected loss amounts. An institution that is permitted to use the IRB Approach for the calculation of risk-weighted exposure amounts and expected loss amounts for ~~a~~ given exposure class**es** may, subject to the competent authority's prior permission, apply the Standardised Approach for some types of exposures within ~~that~~ those exposure class**es** where those types of exposures are immaterial in terms of size and perceived risk profile. ~~An institution that is permitted to use the IRB Approach for the calculation of risk-weighted exposure amounts for only some types of exposures within an exposure class, shall apply the Standardised Approach for the remaining types of exposures within that exposure class.~~'

<u>*Explanation*</u>

The ECB proposes including in point (c) a reference to exposure classes. In this way point (c) would address exposures assigned to exposure classes where institutions have decided to implement the IRB Approach but have not yet received the prior permission of the competent authorities to use the IRB Approach.

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td colspan="2">In addition, the ECB proposes removing the last subparagraph since it is redundant and may have unintended consequences. In fact, Article 148(1) as amended by the proposed regulation clarifies that ‘Once an institution implements the IRB Approach for one of those exposure classes, it shall do so for all the exposures within that exposure class, unless it has received the permission of the competent authorities to use the Standardised Approach permanently in accordance with Article 150’. Therefore, once the IRB Approach is adopted for one exposure class, institutions are obliged to request permission to adopt the IRB Approach for each exposure assigned to that exposure class or, alternatively, to seek permission for the permanent partial use in accordance with Article 150. This latter case is already covered in the subparagraph that precedes the one proposed to be removed, which makes the last subparagraph redundant. It is also worth adding that the two final subparagraphs potentially conflict with each other since in the first ‘may’ is used, while in the second ‘shall’ is used instead.

Finally, the ECB considers it opportune to use the plural “exposure classes” also in the last paragraph of Article 150(1). In fact, the use of the plural “exposure classes” also in the last paragraph of Article 150 allows that a type of exposure can be defined to potentially include exposures assigned to different exposures classes for which the institution decided to, and has received the prior permission of the competent authorities to, use the IRB Approach.</td></tr>
<tr><td colspan="2">Amendment 31

Article 151(1) of the CRR (new)</td></tr>
<tr><td>No text</td><td>‘1. The risk-weighted exposure amounts for credit risk for exposures belonging to one of the exposure classes referred to in points (a) to (~~e~~ d) and (g) of Article 147(2) shall, unless deducted from own funds, be calculated in accordance with Sub-section 2 except where those exposures are deducted from Common Equity Tier 1 items, Additional Tier 1 items or Tier 2 items.

The risk-weighted exposure amounts for credit risk for exposures belonging to the exposure class referred to in point (e1) of Article 147(2) shall, unless deducted from own funds, be calculated in accordance with Article 152 except where those exposures are deducted from Common Equity Tier 1 items, Additional Tier 1 items or Tier 2 items.’</td></tr>
<tr><td colspan="2">Explanation

The ECB proposes amending Article 151(1) of the CRR to delete the reference to point (e) of Article 147(2). The reference to point (e) of Article 147(2) is no longer appropriate in light of the deletion of</td></tr>
</table>

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td colspan="2">Article 155 and the mandatory use of the Standardised Approach envisaged in Article 150(1)(a).
In addition, for exposures belonging to the exposure class referred to in point (e1) of Article 147(2) the ECB proposes including a new subparagraph to clarify that Article 152, which is in Sub-section 1, is relevant to those exposures. Alternatively, Article 152 can be moved to Sub-section 2 and then point (e1) can be included with points (a) – (d) and (g) in the current paragraph 1.</td></tr>
<tr><td colspan="2" align="center">Amendment 32
Point (73)(a) of Article 1 of the proposed regulation (Article 160(1) of the CRR)</td></tr>
<tr><td>‘(a)
[…]
1. For exposures assigned to the exposure class “exposures to institutions” referred to in Article 147(2), point (b), or “exposures to corporates” referred to in Article 147(2), point (c), for the sole purposes of calculating risk weighted exposures and expected losses amounts of those exposures, in particular for the purposes of Article 153, Article 157, Article 158(1), Article 158(5) and Article 158(10), the PD values used in the input of the risk weights and expected loss formulas shall not be less than the following value: 0,05 % (“PD input floor”).’</td><td>‘(a)
[…]
1. For exposures assigned to the exposure class “exposures to institutions” referred to in Article 147(2), point (b), or “exposures to corporates” referred to in Article 147(2), point (c), for the sole purposes of calculating risk weighted exposures and expected losses amounts of those exposures, in particular for the purposes of Article 153, Article 157, Article 158(1), Article 158(5) and Article 158(10), the PD ~~values~~ for each exposure that is used in the input of the risk weights and expected loss formulas shall not be less than the following value: 0,05 % (“PD input floor”).’</td></tr>
<tr><td colspan="2"> <u>Explanation</u> The ECB proposes aligning the wording with CRE32.4 of the Basel III standards to ensure coherency with other parts of the CRR, including Article 159a.</td></tr>
<tr><td colspan="2" align="center">Amendment 33
Point (74)(b) of Article 1 of the proposed regulation (Article 161(4) of the CRR)</td></tr>
<tr><td>‘(b)
[…]
4. For exposures assigned to the exposure class “corporates exposure class” referred to in Article 147(2), point (c), for the sole purpose of calculating risk weighted exposures and expected losses amounts of those exposures, and in particular for the purposes of Article 153(1), point (iii), Article 157, Article 158, paragraphs 1, 5 and</td><td>‘(b)
[…]
4. For exposures assigned to the exposure class “corporates exposure class” referred to in Article 147(2), point (c), for the sole purpose of calculating risk weighted exposures and expected losses amounts of those exposures, and in particular for the purposes of Article 153(1), point (iii), Article 157, Article 158, paragraphs 1, 5 and</td></tr>
</table>

Text proposed by the European Commission	Amendments proposed by the ECB[2]
10, where own LGD estimates are used, the LGD values used in input of the risk weight and expect loss formulas shall not be less than the following LGD input floor values, and calculated in accordance with paragraph 5: […]’	10, where own LGD estimates are used, the LGD ~~values~~ **for each exposure** used in input of the risk weight and expect loss formulas shall not be less than the following LGD input floor values, and calculated in accordance with paragraph 5: […]’
<u>Explanation</u> *The ECB proposes to align the wording with CRE32.16 of the Basel III standards.*	
Amendment 34 Point (74)(c) of Article 1 of the proposed regulation (Article 161(5) of the CRR)	
‘(c) […] 5. For the purposes of paragraph 4, the LGD input floors in Table 2a in that paragraph for exposures fully secured with FCP shall apply when the value of the FCP, after the application of the volatility adjustments H_c and H_{fx} concerned in accordance with Article 230, is equal to or exceeds the value of the underlying exposure. In addition, those values shall be applicable for FCP eligible pursuant to this Chapter. The applicable LGD input floor (LGD_{floor}) for an exposure partially secured with FCP is calculated as the weighted average of $LGD_{U\text{-}floor}$ for the portion of the exposure without FCP and $LGD_{S\text{-}floor}$ for the fully secured portion, as follows: $LGD_{floor} = LGD_{U\text{-}floor} \cdot \frac{E_U}{E \cdot (1+H_E)} + LGD_{S\text{-}floor} \cdot \frac{E_S}{E \cdot (1+H_E)}$ where: $LGD_{U\text{-}floor}$ and $LGD_{S\text{-}floor}$ are the relevant floor values of Table 1; E , E_S , E_U and H_E are determined as specified in Article 230. […]’	‘(c) […] 5. For the purposes of paragraph 4, the LGD input floors in Table 2a in that paragraph for exposures fully secured with FCP shall apply when the value of the FCP, after the application of the volatility adjustments H_c and H_{fx} concerned in accordance with Article 230, is equal to or exceeds the value of the underlying exposure. In addition, those values shall be applicable for FCP eligible pursuant to this Chapter. **In this case, the type of FCP “Other physical collateral” in Table 2aaa of Article 230 shall be understood as “Other physical and other eligible collateral”.** 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: $LGD_{floor} = LGD_{U\text{-}floor} \cdot \frac{E_U}{E \cdot (1+H_E)} + LGD_{S\text{-}floor} \cdot \frac{E_S}{E \cdot (1+H_E)}$ where: $LGD_{U\text{-}floor}$ and $LGD_{S\text{-}floor}$ are the relevant floor values of Table 1;

Text proposed by the European Commission	Amendments proposed by the ECB[2]
	E , E_S , E_U and H_E are determined as specified in Article 230. […]’
<u>*Explanation*</u> *The ECB proposes the addition because the table outlining the volatility adjustments applicable under the Foundation IRB Approach (Table 2aaa in the proposed Article 230) does not cover all funded credit protection (FCP) eligible under the Advanced IRB Approach.*	
Amendment 35 Article 161(5a) of the CRR (new)	
No text	**5a. To the extent that an institution recognises FCP under the IRB Approach, the institution may recognise the FCP in the calculation of the LGD input floor for secured exposures. Otherwise, the LGD input floor for unsecured exposures shall apply.**’
<u>*Explanation*</u> *The ECB proposes to insert a new paragraph 5a after the currently proposed paragraph 5 of Article 161 of the CRR, in order to clarify that, regardless of the application of the floors, institutions may estimate LGD in accordance with the current model design that reflects the most relevant risk drivers and is most suited to the risk profile of the portfolio and recovery strategies of the institution, even if this design does not explicitly differentiate secured from unsecured LGD. Such a split of exposures is required only for the purpose of the calculation of the LGD floor, which is then compared with an LGD estimate applicable to the entire exposure, i.e. by facility*[8]*.*	
Amendment 36 Point (75)(a) of Article 1 of the proposed regulation (Article 162(1) of the CRR)	
‘(a) […] 1. For exposures for which an institution has not received permission of the competent authority to use own estimates of LGD, the maturity value (”M”) shall be 2,5 years, except for exposures arising from securities financing transactions, for	‘(a) […] 1. For exposures for which an institution has not received permission of the competent authority to use own estimates of LGD, the maturity value (”M”) shall be 2,5 years, except for exposures arising from securities financing transactions, for

8 See paragraph 360 of the EBA’s Policy Advice on the Basel III Reforms: Credit Risk, available on the EBA website at www.eba.europa.eu.

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td>which M shall be 0,5 years.
Alternatively, as part of the permission referred to in Article 143, the competent authorities may decide on whether the institution shall use the maturity value M as set out in paragraph 2 for all those exposures of for a subset of those exposures.’</td><td>which M shall be 0,5 years.
Alternatively, as part of the permission referred to in Article 143, the competent authorities may decide on whether all <s>the</s> institutions shall use the maturity value M as set out in paragraph 2 for all those exposures <s>of</s> or for a subset of those exposures.’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The ECB proposes providing competent authorities with the possibility to allow all institutions in their jurisdiction to use the maturity under the advanced approach instead of deciding on a case by case basis. This would ensure the reduction of unwarranted RWEA variability and consistency with CRE32.44 of the Basel III standards.</td></tr>
<tr><td colspan="2">Amendment 37
Point (75)(b)(i) of Article 1 of the proposed regulation (Article 162(2) of the CRR)</td></tr>
<tr><td>‘(i)
[…]
For exposures for which an institution applies own estimates of LGD, the maturity value (”M”) shall be calculated using periods of times expressed in years, as set out in this paragraph and subject to paragraphs 3 to 5 of this Article. M shall be no greater than 5 years, except in the cases specified in Article 384(1) where M as specified there shall be used. M shall be calculated as follows in each of the following cases:’</td><td>‘(i)
[…]
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:’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
Since Article 384 is to be amended the correct reference should be to the second paragraph 2 of Article 384 (note there are currently two paragraphs 2 in the proposed amendment to Article 384 and when this numbering is corrected, the correct reference here should be to the second paragraph 2 as renumbered).</td></tr>
<tr><td colspan="2">Amendment 38
Point (75)(c)(i) of Article 1 of the proposed regulation (Article 162(3) of the CRR)</td></tr>
<tr><td>‘(i)
[…]
Where the documentation requires daily re-</td><td>‘(i)
[…]
Where the documentation requires daily re-</td></tr>
</table>

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td>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:’</td><td>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 **for**:’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The ECB proposes to add the word ‘for’ at the end of the introductory sentence in the first subparagraph of paragraph 3 as currently in Article 162(3) of the CRR because Article 162(3), points (a)-(c) have not been changed.</td></tr>
<tr><td colspan="2">Amendment 39
Point (75)©(ii) of Article 1 of the proposed regulation (Article 162(3) of the CRR)</td></tr>
<tr><td>‘(ii) the second subparagraph is amended as follows:
- point (b) is replaced by the following:
[…]’</td><td>‘(ii) the second subparagraph is amended as follows:
- **“3a. In addition, for qualifying short-term exposures which are not part of the institution’s ongoing financing of the obligor, M shall be at least one-day. Qualifying short term exposures shall include the following:”**
- point (b) is replaced by the following:
[…]’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The ECB proposes to move the second subparagraph of paragraph 3 to a new paragraph 3a because there are two sets of points (a)-(c): one set that belongs to the first subparagraph and another set with the same numbering that belongs to the second subparagraph of paragraph 3.</td></tr>
<tr><td colspan="2">Amendment 40
Point (75)(d) of Article 1 of the proposed regulation (Article 162(4) of the CRR)</td></tr>
<tr><td>‘(d)
[…]
4. For exposures to corporates established in the Union which are not large corporates, institutions may choose to set for all such exposures M as set out in paragraph 1 instead of applying paragraph 2.’</td><td>‘(d)
[…]
4. For exposures to corporates established in the Union which are not large corporates, ~~institutions~~ **competent authorities** ~~may choose to~~ **shall decide on whether all institutions shall** set **M** for all ~~such~~ **of these** exposures ~~M~~ as set out in</td></tr>
</table>

Text proposed by the European Commission	Amendments proposed by the ECB[2]
	paragraph 1 instead of applying paragraph 2.’
<u>*Explanation*</u> *The ECB proposes to align the wording with CRE32.45 of the Basel III standards which in part allows competent authorities to decide whether all institutions must apply the maturity value for exposures as specified in paragraph 1. The proposed amendment as currently worded allows institutions to make that decision and this would create unnecessary variability of RWEAs* *.*	
Amendment 41 Article 162(5) of the CRR	
‘5. Maturity mismatches shall be treated as specified in Chapter 4.’	‘~~5. Maturity mismatches shall be treated as specified in Chapter 4.~~’
<u>*Explanation*</u> *The ECB proposes to delete Article 162(5) as maturity mismatch is not linked with the calculation of the maturity as an input of the risk weight formula but it is rather related to the maturity mismatch between exposure and collateral in the context of LGD estimation.*	
Amendment 42 Point (76)(a) of Article 1 of the proposed regulation (Article 163(1) of the CRR)	
‘(a) […] 1. For the sole purposes of calculating risk weighted exposures and expected losses amounts of those exposures, and in particular for the purposes of Article 154, Article 157 and Article 158, paragraphs 1, 5 and 10, the PD values used in the input of the risk weight and expected loss formulas shall not be less than the following: (a) 0,1 % for QRRE revolvers; (b) 0,05 % for retail exposures which are not QRRE revolvers.’	‘(a) […] 1. For the sole purposes of calculating risk weighted exposures and expected losses amounts of those exposures, and in particular for the purposes of Article 154, Article 157 and Article 158, paragraphs 1, 5 and 10, the PD ~~values~~ **for each retail exposure that is** used in the input of the risk weight and expected loss formulas shall not be less than **the one-year PD associated with the internal borrower grade to which the retail exposure is assigned and** the following: (a) 0,1 % for QRRE revolvers; (b) 0,05 % for retail exposures which are not

Text proposed by the European Commission	**Amendments proposed by the ECB[2]**
	QRRE revolvers.’
<u>*Explanation*</u> *The ECB proposes aligning the wording with CRE32.58 of the Basel III standards to ensure coherency with other parts of the CRR.*	
Amendment 43 Point (77)(c) of Article 1 of the proposed regulation (Article 164(4) of the CRR)	
‘(c) […] 4. For the sole purpose of calculating risk weighted exposures and expected losses amounts for retail exposures, and in particular pursuant to Article 154(1), Articles 157, Article 158, paragraphs 1 and 10, the LGD used in input of the risk weight and expected loss formulas shall not be less than the LGD input floor values laid down in Table 2aa and in accordance with paragraphs 4a and 4b: […]’	‘(c) […] 4. For the sole purpose of calculating risk weighted exposures and expected losses amounts for retail exposures, and in particular pursuant to Article 154(1), **point (ii),** Article~~s~~ 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 paragraph~~s~~ 4a ~~and 4b~~: […]’
<u>*Explanation*</u> *The ECB proposes to align the legal references consistently with the corresponding Article 161(4) applicable to exposures to corporates, institutions and central governments and central banks.* *In particular, point (ii) of Article 154(1) should be included in order to restrict the reference to Article 154(1) only to non-defaulted exposures. This would be in line with Article 161(4) which refers to Article 153(1)(iii). Conversely, if the input floors would be applied to LGD for defaulted exposures, the CRR would have to be reviewed to specify the treatment of Expected Loss Best Estimate in order to ensure adequate RWEA for defaulted exposures. Reference to paragraph 5 of Article 158 should be included since that paragraph defines the calculation of the expected loss also for retail exposures.* *Moreover, it is proposed to align the wording with CRE32.58 of the Basel III standards.* *Finally, the reference to paragraph 4b is deleted in accordance with the proposal outlined in Amendment 45.*	
Amendment 44 Point (77)(d) of Article 1 of the proposed regulation (Article 164(4a) of the CRR)	

Text proposed by the European Commission	Amendments proposed by the ECB[2]
‘(d) […] 4a. For the purposes of paragraph 4, the following shall apply: (a) LGD input floors in paragraph 4, Table 2aa shall be applicable for exposures secured with FCP when the FCP is eligible pursuant to this Chapter; (b) except for retail exposures secured by residential property, the LGD input floors in paragraph 4, Table 2aa shall be applicable to exposures fully secured with FCP where the value of the FCP, after the application of the relevant volatility adjustments in accordance with Article 230, is equal to or exceeds the value of the underlying exposure; (c) except for retail exposures secured by residential property, the applicable LGD input floor for an exposure partially secured with FCP is calculated in accordance with the formula laid down in Article 161(5); (d) for retail exposures secured by residential property, the applicable LGD input floor shall be fixed at 5 % irrespective of the level of collateral provided by the residential property. […]’	‘(d) […] 4a. For the purposes of paragraph 4, the following shall apply: (a) LGD input floors in paragraph 4, Table 2aa shall be applicable for exposures secured with FCP when the FCP is eligible pursuant to this Chapter; (b) except for retail exposures secured by residential property, the LGD input floors in paragraph 4, Table 2aa shall be applicable to exposures fully secured with FCP where the value of the FCP, after the application of the relevant volatility adjustments in accordance with Article 230, is equal to or exceeds the value of the underlying exposure; (c) except for retail exposures secured by residential property, the applicable LGD input floor for an exposure partially secured with FCP is calculated in accordance with the formula laid down in Article 161(5); (d) for retail exposures secured by residential property, the applicable LGD input floor shall be fixed at 5 % irrespective of the level of collateral provided by the residential property. **For the purposes of point (b), the type of FCP “Other physical collateral” in Table 2aaa of Article 230 shall be understood as “Other physical and other eligible collateral”** […]’
<u>*Explanation*</u> *The ECB proposes the addition because the table outlining the volatility adjustments applicable under the Foundation IRB Approach (Table 2aaa in proposed Article 230) does not cover all FCP eligible under the Advanced IRB Approach.*	
Amendment 45 Point (77)(d) of Article 1 of the proposed regulation (Article 164(4b) of the CRR)	

Text proposed by the European Commission	Amendments proposed by the ECB[2]
'(d) […] 4b. Where an institution is not able to recognise the effects of the FCP securing one of the exposures of that type of exposures in the own LGD estimates, the institution shall be permitted to apply the formula set out in Article 230, with the exception that the LGDU term in that formula shall be the institution's own LGD estimate. In that case, the FCP shall be eligible in accordance with Chapter 4 and the institution own LGD estimate used as LGDU term shall be calculated based on underlying losses data excluding any recoveries arising from that FCP.'	'(d) […] ~~4b. Where an institution is not able to recognise the effects of the FCP securing one of the exposures of that type of exposures in the own LGD estimates, the institution shall be permitted to apply the formula set out in Article 230, with the exception that the LGDU term in that formula shall be the institution's own LGD estimate. In that case, the FCP shall be eligible in accordance with Chapter 4 and the institution own LGD estimate used as LGDU term shall be calculated based on underlying losses data excluding any recoveries arising from that FCP.~~ **4b. To the extent that an institution recognises FCP under the IRB Approach, the institution may recognise the FCP in the calculation of the LGD input floor for secured exposures. Otherwise, the LGD input floor for unsecured exposures shall apply.**'

Explanation

The ECB proposes to delete the proposed Article 164(4b), i.e. not to allow the simplified Advanced IRB Approach set out in CRE32.18 of the Basel III standards for retail exposures because such paragraph applies to corporate and bank exposures (cf. CRE32.2 of the Basel III standards). Moreover, for retail exposures the Foundation IRB Approach cannot be applied, and the information on FCP is not expected to be scarce.

The ECB proposes to insert a new paragraph 4b in Article 164 after the proposed new paragraph 4a, in order to clarify that, regardless of the application of the floors, institutions may estimate LGD in accordance with the current model design that reflects the most relevant risk drivers and is most suited to the risk profile of the portfolio and recovery strategies of the institution, even if this design does not explicitly differentiate secured from unsecured LGD. Such a split of exposures is required only for the purpose of the calculation of the LGD floor, which is then compared with an LGD estimate applicable to the entire exposure, i.e. by facility[9].

9 See paragraph 360 of the EBA's Policy Advice on the Basel III Reforms: Credit Risk, available on the EBA website at www.eba.europa.eu.

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Amendment 46 Point (79)(a) of Article 1 of the proposed regulation (Article 166(8) of the CRR)	
‘(a) […] 8. The exposure value of off-balance sheet items which are not contracts as listed in Annex II, shall be calculated by using either using IRB-CCF or SA-CCF, in accordance with paragraphs 8a and 8b and Article 151(8). Where the drawn balances of revolving facilities have been securitised, institutions shall ensure that they continue to hold the required amount of own funds against the undrawn balances associated with the securitisation. An institution that does not use IRB-CCF, shall calculate the exposure value as the committed but undrawn amount multiplied by the SA-CCF concerned. An institution that does not use IRB-CCF, shall calculate the exposure value for undrawn commitments as the undrawn amount multiplied by an IRB-CCF.’	‘(a) […] 8. The exposure value of off-balance sheet items which are not contracts as listed in Annex II, shall be calculated by using either ~~using~~ IRB-CCF or SA-CCF, in accordance with paragraphs 8a and 8b and Article 151(8). Where the drawn balances of revolving facilities have been securitised, institutions shall ensure that they continue to hold the required amount of own funds against the undrawn balances associated with the securitisation. An institution that does not use IRB-CCF, shall calculate the exposure value as the ~~committed but undrawn~~ amount **specified in paragraph 8a** multiplied by the SA-CCF concerned. An institution **that** ~~does not use~~ **uses** IRB-CCF, shall calculate the exposure value for undrawn commitments as the undrawn amount multiplied by an IRB-CCF.’
<u>*Explanation*</u> *The ECB proposes to amend the fourth introductory subparagraph of paragraph 8 as this sentence should specify the requirement for the calculation of the exposure value for institutions estimating their own CCF estimates.* *In addition, the ECB proposes that the third introductory subparagraph of paragraph 8 should refer to paragraph 8a which specifies that the amount, to which the IRB-CCF must be applied, must be the lower of the value of the unused committed credit line, and the value that reflects any possible constraining of the availability of the facility, instead of the undrawn amount currently proposed in paragraph 8. This would ensure consistency with the article and reduce the risk of misinterpretation.*	
Amendment 47 Point (79)(b) of Article 1 of the proposed regulation (Article 166(8a) of the CRR)	

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td>‘(b)
[…]
8a. For an exposure for which the IRB-CCF is not used, the applicable CCF shall be the SA-CCF as provided under Chapter 2 for the same types of items as laid down in Article 111. The amount to which the SA-CCF shall be applied shall be the lower of the value of the unused committed credit line, and the value that reflects any possible constraining of the availability of the facility, including the existence of an upper limit on the potential lending amount which is related to an obligor’s reported cash flow. Where a facility is constrained in that way, the institution shall have sufficient line monitoring and management procedures to support the existence of that constraining.
[…]’</td><td>‘(b)
[…]
8a. For an exposure for which the IRB-CCF is not used, the applicable CCF shall be the SA-CCF as provided under Chapter 2 for the same types of items as laid down in Article 111. The amount to which the SA-CCF shall be applied shall be the lower of the value of the ~~unused~~ **undrawn** committed credit line, and the value that reflects any possible constraining of the availability of the facility, including the existence of an upper limit on the potential lending amount which is related to an obligor’s reported cash flow. Where a facility is constrained in that way, the institution shall have sufficient line monitoring and management procedures to support the existence of that constraining.
[…]’</td></tr>
<tr><td colspan="2"><u>*Explanation*</u>
The ECB proposes to replace ‘unused committed credit line’ with ‘undrawn committed credit line’ for the consistency of terminology.</td></tr>
<tr><td colspan="2">Amendment 48
Point (79)(b) of Article 1 of the proposed regulation (Article 166(8c) of the CRR)</td></tr>
<tr><td>‘(b)
[…]
8c. For the sole purposes of calculating risk weighted exposures and expected losses amounts of exposures arising from revolving commitments where IRB-CCF are used, in particular pursuant to Article 153(1), Article 157, Article 158 paragraph 1, 5 and 10, the exposure value used as input in the risk weighted exposure amount and expect loss formulas shall not be less that then the sum of:
[…]’</td><td>‘(b)
[…]
8c. For the sole purposes of calculating risk weighted exposures and expected losses amounts of exposures arising from revolving commitments where IRB-CCF are used, in particular pursuant to Article 153(1), Article 157, Article 158 paragraph 1, 5 and 10, the exposure value **for each exposure** used as input in the risk weighted exposure amount and expect loss formulas shall not be less that then the sum of:
[…]’</td></tr>
</table>

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Explanation *The ECB proposes to align the wording with CRE32.64 of the Basel III standards where the requirement should be applied for each exposure.*	
Amendment 49 Point (83) of Article 1 of the proposed regulation (Article 171(3) of the CRR)	
'(83) […] 3. Rating systems shall be designed in such a way that idiosyncratic or industry-specific changes are a driver of migrations from one grade to another. In addition, business cycles effects shall be taken into account as a driver for migrations of obligors and facilities from one grade or pool to another.'	'(83) […] 3. **Although the time horizon used in PD estimation is one year, institutions shall use a longer time horizon in assigning ratings. A borrower rating must represent the institution's assessment of the borrower'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 or industry-specific changes are a driver of migrations from one grade to another. In addition, business cycles effects shall be taken into account as a driver for migrations of obligors and facilities from one grade or pool to another.'
Explanation *The specification of the time horizon for rating assignments as proposed by the Basel III standards in CRE36.29 and CRE36.30 would ensure adequate risk differentiation despite adverse economic conditions and increase the RWEA comparability across institutions.*	
Amendment 50 Point (84)I of Article 1 of the proposed regulation (Article 172(1)(d) of the CRR)	
'I […] 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	'I […] 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 **as specified in Article 291(1), point (b)** for each

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td>exposed. Transactions with counterparties where specific wrong way risk has been identified shall be treated differently when calculating their exposure value;’</td><td>legal entity to which the institution is exposed. Transactions with counterparties where specific wrong way risk has been identified shall be treated differently when calculating their exposure value as specified in Article 191(5);’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The ECB proposes to clarify the definition of specific wrong way risk laid down in Article 172(1), point (d) by referring to Article 291(1), point (b). The ECB also proposes to include the reference to Counterparty Credit Risk Standards (i.e. by referring to Article 191(5)) to align with the text of the Basel III standards and the intended scope of the requirement.</td></tr>
<tr><td colspan="2">Amendment 51
Point (89)(b) of Article 1 of the proposed regulation (Article 178(1)(b) of the CRR)</td></tr>
<tr><td>‘(b)
[…]
(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.’</td><td>‘(b)
[…]
(b) the obligor is more than 90 consecutive days past due on any material credit obligation to the institution, the parent undertaking or any of its subsidiaries’.</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The ECB proposes to add a reference to ‘consecutive’ days past due in order to ensure consistency with Commission Delegated Regulation (EU) 2018/171[10], Article 1(5) and Article 2(4).</td></tr>
<tr><td colspan="2">Amendment 52
Second subparagraph of Article 178(1) of the CRR (new)</td></tr>
<tr><td>No text</td><td>‘In the case of retail exposures, institutions may apply the definition of default laid down in points (a) and (b) of the first subparagraph at the level of an individual credit facility rather than in relation to the total obligations of a borrower. In this case, the requirements laid down in paragraphs 2 to 5 shall apply at the level of the individual credit facility.’</td></tr>
</table>

10 Commission Delegated Regulation (EU) 2018/171 of 19 October 2017 on supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the materiality threshold for credit obligations past due (OJ L 32, 6.2.2018, p. 1).

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td colspan="2"><u>Explanation</u>
The ECB proposes to clarify, with a new sentence at the end of the second subparagraph of Article 178(1) of the CRR, that, where the definition of default is applied at the level of an individual credit facility, the requirements laid down in Article 178 shall be satisfied at that level.</td></tr>
<tr><td colspan="2">Amendment 53
Point (90)(a)(iv) of Article 1 of the proposed regulation (Article 180(1) of the CRR)</td></tr>
<tr><td>‘(iv) the following subparagraph is added:
“For the purposes of point (h), where the available observation period spans a longer period for any source, and this data is relevant, this longer period shall be used. The data shall include a representative mix of good and bad years relevant for the type of exposures. Subject to the permission of competent authorities, institutions which have not received the permission of the competent authority pursuant to Article 143 to use own estimates of LGDs or conversion factors may use, when they implement the IRB Approach, relevant data covering a period of two years. The period to be covered shall increase by one year each year until relevant data cover a period of five years.”;’</td><td>‘(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 be <s>include a</s> representative of the likely range of variability of default rates relevant <s>mix of good and bad years relevant</s> for the type of exposures. Subject to the permission of competent authorities, institutions which have not received the permission of the competent authority pursuant to Article 143 to use own estimates of LGDs or conversion factors may use, when they implement the IRB Approach, relevant data covering a period of two years. The period to be covered shall increase by one year each year until relevant data cover a period of five years.”;’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The ECB recommends replacing the requirement for a ‘representative mix of good and bad years’, as the use of the adjectives ‘good’ and ‘bad’ are not considered to be appropriate for a legal text. The ECB proposes to align the text with the wording of Article 49(3) of the EBA Final Draft Regulatory Technical Standards on the specification of the assessment methodology for competent authorities regarding compliance of an institution with the requirements to use the IRB Approach in accordance with Articles 144(2), 173(3) and 180(3)(b) of Regulation (EU) No 575/2013 (EBA/RTS/2016/03)[11]. Further clarification on the implementation of such requirement is already given in the level II text i.e. EBA Guidelines on PD estimation, LGD estimation and the treatment of defaulted exposures (EBA/GL/2017/16[12]).</td></tr>
</table>

11 Available on the EBA website at www.eba.europa.eu.

12 Available on the EBA website at www.eba.europa.eu.

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td colspan="2">Amendment 54
Point (90)(b)(iii) of Article 1 of the proposed regulation (Article 180(2)I of the CRR)</td></tr>
<tr><td>‘(iii) the following subparagraph is added:
“For the purposes of point I, where the available observation spans a longer period for any source, and where those data are relevant, such longer period shall be used. The data shall contain a representative mix of good and bad years of the economic cycle relevant for the type of exposures. The PD shall be based on the observed historical average one-year default rate. Subject to the permission of the competent authorities, institutions may use, when they implement the IRB Approach, relevant data covering a period of two years. The period to be covered shall increase by one year each year until relevant data cover a period of five years.’</td><td>‘(iii) the following subparagraph is added:
“For the purposes of point I, 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~~ **be representative of the likely range of variability of default rates** relevant for the type of exposures. The PD **for each rating grade** shall be based on the observed historical average one-year default rate **that is a simple average based on the number of obligors (count weighted), or based on the number of facilities only where the definition of default is applied at individual credit facility level pursuant to Article 178(1) second subparagraph, and other approaches, including exposure-weighted averages, shall not be permitted.** Subject to the permission of the competent authorities, institutions may use, when they implement the IRB Approach, relevant data covering a period of two years. The period to be covered shall increase by one year each year until relevant data cover a period of five years.’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
Firstly, the ECB recommends replacing the requirement for a ‘representative mix of good and bad years’, as explained in Amendment 53. Secondly, with regard to the computation of the average of the one-year default rates, the ECB proposes to align the text with the wording used for non-retail exposures in Article 180(1), point (i) and to cover the specification of the facility level estimation for retail exposures as a consequence of the amendments to Article 178(1), Article 180(2)(a) and Article 4(1)(78).</td></tr>
<tr><td colspan="2">Amendment 55
Article 182(1a) of the CRR (new)</td></tr>
</table>

Text proposed by the European Commission	Amendments proposed by the ECB[2]
No text	‘**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**.’
Explanation *The ECB proposes to insert a new paragraph 1a in Article 182 in order to include the requirement from CRE36.95 of the Basel III standards. This addition will allow reduction of unwarranted RWEA variability. This was also suggested by EBA in recommendation No. CR-IR 19 of Policy Advice on the Basel III reforms: Credit risk.*	
Amendment 56 Article 182(1b) of the CRR (new)	
No text	‘**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.**’
Explanation *The ECB proposes to insert a new paragraph 1b in Article 182 in order to include the requirement from CRE36.96 of the Basel III standards after Amendment 55. This was also suggested by EBA in recommendation No. CR-IR 19 of Policy Advice on the Basel III reforms: Credit risk.*	
Amendment 57 Point (92)(a)(iii) of Article 1 of the proposed regulation (first subparagraph of Article 182(1) of the CRR)	
‘(iii) […] 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. […]’	‘(iii) […] ~~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.~~ […]’

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td colspan="2"><u>Explanation</u>
The ECB proposes to delete this subparagraph as it is a duplication of the second sentence of point © of paragraph 1.</td></tr>
<tr><td colspan="2">Amendment 58
Point (92)(a)(iii) of Article 1 of the proposed regulation (fourth subparagraph of Article 182(1) of the CRR)</td></tr>
<tr><td>‘(iii)
[…]
For the purposes of the fourth subparagraph, point (d), institutions shall demonstrate to the competent authorities that they have a detailed understanding of the impact of changes in customer product mix on the exposures reference data sets and associated CCF estimates, and that the impact is immaterial or has been effectively mitigated within their estimation process. In that regard, the following shall not be deemed appropriate:
(a) setting floors to CCF or exposure values observations
[…]’</td><td>‘(iii)
[…]
For the purposes of the ~~fourth~~ **third** subparagraph, point (d), institutions shall demonstrate to the competent authorities that they have a detailed understanding of the impact of changes in customer product mix on the exposures reference data sets and associated CCF estimates, and that the impact is immaterial or has been effectively mitigated within their estimation process. In that regard, the following shall not be deemed appropriate:
(a) setting floors to **realised** CCF or **realised** exposure values ~~observations~~
[…]’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The ECB proposes to clarify that this requirement is referring to realised CCF to align with the terminology used throughout the CRR and in particular with Article 182 of the CRR.</td></tr>
<tr><td colspan="2">Amendment 59
Point (95) of Article 1 of the proposed regulation (Article 192(5) of the CRR)</td></tr>
<tr><td>‘(95)
[…]
(5) “substitution of risk weight approach under SA” means the substitution, in accordance with Article 235, of the risk weight of the underlying exposure with the risk weight applicable under the Standardised Approach to a comparable direct exposure to the protection provider;</td><td>‘(95)
[…]
(5) “substitution of risk weight approach under SA” means the substitution~~, in accordance with Article 235,~~ of the risk weight of the underlying exposure with the risk weight applicable under the Standardised Approach to a comparable direct exposure to the protection provider **in accordance**</td></tr>
</table>

Text proposed by the European Commission	Amendments proposed by the ECB[2]
[…]’	**with Article 235, when the guaranteed exposure is treated under the Standardised Approach**; […]’
Explanation *The ECB proposes to clarify the definition laid down in Article 192(5) to better distinguish it from the definition laid down in Article 192(6).*	
Amendment 60 Point (95) of Article 1 of the proposed regulation (Article 192(6) of the CRR)	
‘(95) […] (6) “substitution of risk weight approach under IRB” means the substitution, in accordance with Article 235a, of the risk weight of the underlying exposure with the risk weight applicable under the Standardised Approach to a comparable direct exposure to the protection provider; […]’	‘(95) […] (6) “substitution of risk weight approach under IRB” means the substitution~~, in accordance with Article 235a,~~ of the risk weight of the underlying exposure with the risk weight applicable under the Standardised Approach to a comparable direct exposure to the protection provider **in accordance with Article 235a, when the guaranteed exposure is treated under the IRB Approach and comparable direct exposures to the protection provider are treated under the Standardised Approach**; […]’
Explanation *The ECB proposes to clarify the definition laid down in Article 192(6) to better distinguish it from the definition laid down in Article 192(5).*	
Amendment 61 Point (103)(a)(i) of Article 1 of the proposed regulation (Article 208(3)(b) of the CRR)	
‘(i) […] The value of the property shall not exceed the average value measured for that property or for a comparable property over the last three years in case of commercial immovable property, and over the last six years in case of residential property.	‘(i) […] ~~The value of the property shall not exceed the average value measured for that property or for a comparable property over the last three years in case of commercial immovable property, and over the last six years in case of residential property.~~

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td>Modifications made to the property that improve the energy efficiency of the building or housing unit shall be considered as unequivocally increasing its value.’</td><td>The property value used for an exposure secured by an immovable property shall not exceed the property value of this immovable property measured when the institution entered that exposure. Modifications made to the property that improve the energy efficiency of the building or housing unit shall be considered as unequivocally increasing its value.’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
Basing the ceiling for the present property value on the average value of that property, or comparable properties, over the last years could result in using a value that is higher than the value at origination when the institution entered the exposure secured by the immovable property. CRE20.74 of the Basel III standards prohibits such increase where this does not result from modifications made to the property that unequivocally increase its value. This prohibition represents one of the lessons learned from the global financial crisis, which was fuelled in some real estate markets by continued lending that relied on an increase in property values which in the end were not sustainable.
When an institution enters an exposure secured by immovable properties, the interest rate and other terms and conditions for that exposure are determined by reference to the underlying property value at that point in time. Any later increase in property value does not affect these calculations. Thus prohibiting the use of the current increased property value in the calculation of own funds requirements should not affect the originally intended transaction.
Unlike downwards adjustments which are required whenever the property value decreases, it is also not that necessary for risk sensitivity to allow an increase beyond the initially measured property value. Requiring downwards adjustments but allowing upwards adjustments only up to the initially measured property value balances desirable risk sensitivity with at least some protection against overestimated property values.</td></tr>
<tr><td colspan="2">Amendment 62
Point (103)(b) of Article 1 of the proposed regulation (Article 208(3a) of the CRR)</td></tr>
<tr><td>‘(b)
[…]
3a. In accordance with paragraph 3 and subject to the approval of the competent authorities, institutions may carry out the valuation and revaluation of the property value by means of advanced statistical or other mathematical methods (“models”), developed independently</td><td>‘(b)
[…]
3a. In accordance with paragraph 3 and subject to the approval of the competent authorities, institutions may carry out the <s>valuation and revaluation</s> monitoring of the property value and the identification of immovable property in need of revaluation by means of advanced</td></tr>
</table>

Text proposed by the European Commission	Amendments proposed by the ECB[2]
from the credit decision process, subject to the fulfilment of the following conditions: (a) the institutions set out, in their policies and procedures, the criteria for using models to valuate, revaluate and monitor the values of collateral. Those policies and procedures shall account for such models' proven track record, property-specific variables considered, the use of minimum available and accurate information, and the models' uncertainty; (b) the institutions ensure that the models used are: (i) property and location specific at a sufficient level of granularity; (ii) valid and accurate, and subject to robust and regular back-testing against the actual observed transaction prices; (iii) based on a sufficiently large and representative sample, based on observed transaction prices; (iv) based on up-to-date data of high quality; (c) the institutions are ultimately responsible for the appropriateness and performance of the models, the valuer referred to in paragraph 3, point (b), is responsible for the valuation that is made using the models and the institutions understand the methodology, input data and assumptions of the models used; (d) the institutions ensure that the documentation of the models is up to date; (e) the institutions have in place adequate IT processes, systems and capabilities and have sufficient and accurate data for any model-based valuation or revaluation of collateral; (f) the estimates of models are independently validated and the validation process is generally consistent with the principles set out in Article 185, and the independent valuer	statistical or other mathematical methods ("models"), developed independently from the credit decision process, subject to the fulfilment of the following conditions: (a) the institutions set out, in their policies and procedures, the criteria for using models to ~~valuate, revaluate and~~ monitor the values of collateral **and to identify immovable property in need of revaluation**. Those policies and procedures shall account for such models' proven track record, property-specific variables considered, the use of minimum available and accurate information, and the models' uncertainty; (b) the institutions ensure that the models used are: (i) property and location specific at a sufficient level of granularity; (ii) valid and accurate, and subject to robust and regular back-testing against the actual observed transaction prices; (iii) based on a sufficiently large and representative sample, based on observed transaction prices; (iv) based on up-to-date data of high quality; (c) the institutions are ultimately responsible for the appropriateness and performance of the models, the valuer referred to in paragraph 3, point (b), is responsible for the valuation ~~that is made~~ **of immovable property for which the need for revaluation has been identified** using the models**,** and the institutions understand the methodology, input data and assumptions of the models used; (d) the institutions ensure that the documentation of the models is up to date; (e) the institutions have in place adequate IT processes, systems and capabilities and have

Text proposed by the European Commission	Amendments proposed by the ECB[2]
referred to in paragraph 3, point (b) is responsible for the final values used by the institution for the purposes of this Chapter.’	sufficient and accurate data for any model-based ~~valuation or revaluation~~ **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, and the independent valuer referred to in paragraph 3, point (b) is responsible for the final values used by the institution for the purposes of this Chapter.’

<u>*Explanation*</u>

The use of statistical models should remain restricted to monitoring the need for revaluation. Institutions should not be allowed to exclusively rely on models for valuation of immovable property. Immovable properties in need of revaluation should always be evaluated by an independent qualified valuer.

Currently Article 208(3) of the CRR permits statistical methods exclusively for the purpose of monitoring the value of immovable property in order to identify immovable property that needs revaluation, but the property valuation itself must be reviewed by an independent valuer who possesses the necessary qualifications, ability and experience to execute a valuation.

CRE36.131 of the Basel III standards maintains this strict limitation of statistical methods to monitoring only. It permits the use of statistical methods of evaluation (e.g. reference to house price indices, sampling) to identify collateral that may have declined in value and that may need reappraisal, but explicitly requires that a qualified professional must evaluate the property when information indicates that the value of the collateral may have declined materially relative to general market prices.

Allowing statistical models also for property valuation and revaluation would imprudently allow institutions to never perform any actual revaluation of the pledged individual immovable property by an independent qualified reviewer. Lower own funds requirements for real estate exposures would exclusively rely on an institution’s modelling, which could cause a significant gap in loss coverage should the modelled value not be realised when selling the specific immovable property in case of a default on the secured exposure.

Amendment 63

Point (119) of Article 1 of the proposed regulation (Article 230(1) of the CRR)

Text proposed by the European Commission	Amendments proposed by the ECB[2]
'(119) […] 1. Under the IRB Approach, except for those exposures that fall under the scope of Article 220, institutions shall use the effective LGD (LGD*) as the LGD for the purposes of Chapter 3 to recognise funded credit protection eligible pursuant to this Chapter. Institutions shall calculate LGD* as follows: $LGD^* = LGD_U \cdot \frac{E_U}{E \cdot (1+H_E)} + LGD_S \cdot \frac{E_S}{E \cdot (1+H_E)}$ where: *E* = the exposure value before taking into account the effect of the funded credit protection. For an exposure secured with financial collateral eligible in accordance with this Chapter, that amount shall be calculated in accordance with Article 223(3). In the case of securities lent or posted, that amount shall be equal to the cash lent or securities lent or posted. For securities that are lent or posted the exposure value shall be increased by applying the volatility adjustment (H_E) in accordance with Articles 223 to 227; E_S = the current value of the funded credit protection received after the application of the volatility adjustment applicable to that type of funded credit protection (H_C) and the application of the volatility adjustment for currency mismatches (H_{fx}) between the exposure and the funded credit protection, in accordance with paragraphs 2 and 2a. E_S shall be capped at the following value: $E \cdot (1+H_E)$; $E_U = E \cdot (1+H_E) - E_S$; 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,	'(119) […] 1. Under the IRB Approach, except for those exposures that fall under the scope of Article 220, institutions shall use the effective LGD (LGD*) as the LGD for the purposes of Chapter 3 to recognise funded credit protection eligible pursuant to this Chapter. Institutions shall calculate LGD* as follows: $LGD^* = LGD_U \cdot \frac{E_U}{E \cdot (1+H_E)} + LGD_S \cdot \frac{E_S}{E \cdot (1+H_E)}$ where: *E* = the exposure value before taking into account the effect of the funded credit protection. For an exposure secured with financial collateral eligible in accordance with this Chapter, that amount shall be calculated in accordance with Article 223(3). In the case of securities lent or posted, that amount shall be equal to the cash lent or securities lent or posted. For securities that are lent or posted the exposure value shall be increased by applying the volatility adjustment (H_E) in accordance with Articles 223 to 227; E_S = the current value of the funded credit protection received after the application of the volatility adjustment applicable to that type of funded credit protection (H_C) and the application of the volatility adjustment for currency mismatches (H_{fx}) between the exposure and the funded credit protection, in accordance with paragraphs 2 and 2a **and any maturity mismatch in accordance with Section 5**. 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

Text proposed by the European Commission	Amendments proposed by the ECB[2]
as specified in paragraph 2, Table 2aaa. […]'	by the type of eligible FCP ~~used in the transaction~~, as specified in paragraph 2, Table 2aaa. […]'
Explanation *For clarification purposes, the ECB proposes to complement the definition of E_S with the requirement in case of maturity mismatch.* *Moreover, the ECB proposes to delete 'used in the transaction' in the definition of LGD_S because LGD has to be estimated at facility level and the wording 'used in the transaction' could introduce unwarranted interpretations.*	
Amendment 64 Second subparagraph of Article 284(6) of the CRR (new)	
No text	**'The calculation of Effective EPE shall not include the effect of trade-related cash flow payments from the institution to the defaulting counterparty and vice versa for margined trading during the margin period of risk. The impact of such trade-related cash flow payments shall be taken into account by adding to Effective EPE the term:** $$\frac{1}{min\{1\ year, maturity\}} \cdot \sum_{k=1}^{min\{1\ year, maturity\}} ESE_{t_k} \cdot \Delta t_k$$ **where:** $ESE_{t_k} =$ **expected spike exposures is calculated as the expected exposure increase due to trade-related cash flow payments from the institution to the defaulting counterparty during the margin period of risk that are possible due to contractual provisions (e.g. grace periods), the default notification and management processes of the institution and due to applicable settlement netting rules for such cash flows, which can also include variation margin payments if contractually agreed;** $\Delta t_k =$ **denotes the time period inside the**

Text proposed by the European Commission	Amendments proposed by the ECB[2]
	margin period of risk attached to the time grid point t_k where such payments are possible, expressed in units of a year.'

Explanation

The ECB proposes a new provision to address additional spike risk for margined trading, to be inserted as a new additional subparagraph in Article 284(6).

A counterparty may go into default shortly after a still successful margin call, and the supervised institution still pays trade-related cashflows like swap coupons for a short period of one or more days to that counterparty. By way of past example, Kreditanstalt für Wiederaufbau made a payment of about 300 million EUR to Lehman Brothers one day after the Lehman default. The proposed new provision is intended to cover payments that can occur in line with existing processes and potential legal requirements to still pay to a counterparty that goes into default (e.g. as a result of a contractually agreed 'grace period' in a Credit Support Annex, which constitutes a collateral agreement), and those payments are not seen as an operational failure or operational risk. Such payments increase exposures often significantly (resulting in a 'spike') above a 'smooth' level and lead to immediate margin calls on the counterparty, which, however, being in default, cannot serve them any longer.

The need for considering the risk due to paid cash flows (in the 'margin period of risk' of margined trading) is explained in paragraphs 20 and 21 of the ECB Guide for Internal Models[13], based on the corresponding CRR requirements.

This is not a settlement risk, as this covers only the few days for maturing transactions where an institution starts to pay without having received all counterparty payments.

The change would be in line with un-margined trading because all (material) payments and also all maturing transactions have an immediate impact on the exposure time profile, see e.g. Article 292(1)(a) and (b) of the CRR and Article 289(5) of the CRR.

The ECB has considered the impact of including spikes for margined trading in targeted review of internal models (TRIM) investigations. Economically, the risk to the institution of having to make trade-related cashflow payments or where a payment is done due to its default management process in a situation where the counterparty goes into default, is a short term risk, because such payments can only happen within a short period of one or a more days. Taking this short time period into account via an economic assessment, TRIM impact studies have shown an increase on average of up to 5% on counterparty credit risk (CCR) own funds requirements (OFR). If these spikes are subject to effectivisation inside Effective Expected Positive Exposure (EPE), however, the impact on OFR can be up to 50% (with the level of available initial margin around 2020 in TRIM impact studies). Here 'effectivisation' means that expected exposure as of a time grid point t must monotonically rise due to

13 Available on the ECB Banking Supervision website at www.bankingsupervision.europa.eu.

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paragraph 5 of Article 284 of the CRR. The reason for the increase of the exposure amount of up to 50% is that, if expected exposures are treated according to Articles 284(5) and (6) of the CRR, expected exposure increases, especially at an early point in time on the expected exposure time axis, keep exposures high due to effectivisation. This ignores the small spike width and results in a high average effective exposure for 1 year and then finally to a high and very (overly) conservative exposure value and OFR. *National or EU law can refine and exceed Basel standards.* *The ECB has also considered whether providing for spike risk in this way in regulation conflicts with the Basel III standards but since additional risk and an additional (still moderate) capital charge would be in addition to the charge due to smooth exposures (which are understood by most Basel members to be part of the Basel III standards) EU law would not be more lenient than the Basel III standards. The ECB notes that – to the best of its knowledge – supervisors and regulators outside the EU do not currently consider spike risk (only smooth exposures). Avoiding capitalising such payments via Effective EPE (and instead using a moderate add-on as proposed in the new provision) thus also avoids comparative disadvantages for EU banks versus US and Asian banks. Conversely, ignoring the spike risk altogether in capital requirements is not considered appropriate.*	
Amendment 65 Point (131) of Article 1 of the proposed regulation (Article 312, Article 313a (new), Article 317(1) and Article 322 of the CRR)	
‘(131) […] Article 312 Own funds requirement The own funds requirement for operational risk shall be the business indicator component calculated in accordance with Article 313. […]	‘(131) […] Article 312 Own funds requirement The own funds requirement for operational risk shall be the **product of the** business indicator component calculated in accordance with Article 313 **and the internal loss multiplier calculated in accordance with Article 313a**. […] **Article 313a** **Internal loss multiplier** **1. Institutions shall calculate their internal loss multiplier component in accordance with the following formula:**

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Article 317 Loss data set 1. Institutions that calculate annual operational risk losses in accordance with Article 316(1) shall have in place arrangements, processes and mechanisms to inform and maintain updated on an ongoing basis a loss data set compiling for each recorded operational risk event the gross loss amounts, non-insurance recoveries, insurance	$$ILM = \begin{cases} 1, & \text{where BI} \leq 1 \\ ln\left(e - 1 + \left(\frac{LC}{BIC}\right)^{0.8}\right), & \text{where BI} > 1 \end{cases}$$ **where:** **ILM = the internal loss multiplier;** **BI = the business indicator, expressed in billions of euro, calculated in accordance with Article 314;** **LC = the loss component, expressed in billions of euro, calculated as 15 times the annual average over the last ten financial years of the annual operational risk losses calculated in accordance with Articles 316 and 318 and Article 319(1).** **2. When the business indicator of an institution exceeds 1 for the first time:** **(a) institutions that do not have ten years of good quality loss data may use a minimum of five years of data to calculate the loss component;** **(b) institutions that do not have five years of good-quality loss data shall set the internal loss multiplier at 1;** **(c) competent authorities may however require an institution to calculate the loss component using fewer than five years of losses if the resulting internal loss multiplier is greater than 1 and competent authorities believe the losses are representative of the institution's operational risk exposure.** […] Article 317 Loss data set 1. Institutions that calculate annual operational risk losses in accordance with Article 316(1) shall have in place arrangements, processes and mechanisms to inform and maintain updated on an ongoing basis a loss data set compiling for each

Text proposed by the European Commission	Amendments proposed by the ECB[2]
recoveries, reference date and grouped losses, including those from misconduct events. […]	recorded operational risk event the gross loss amounts, non-insurance recoveries, insurance recoveries, reference ~~date~~ **dates** and grouped losses, including those from misconduct events. **These arrangements, processes and mechanisms shall be internally reviewed before the use of the loss data set for the calculation of own funds requirement for operational risk.** […]
Article 322 Review of the comprehensiveness, accuracy and quality of the loss data 1. Institutions shall have in place the organisation and processes to review the comprehensiveness, accuracy and quality of the loss data independently. 2. Competent authorities shall periodically review the quality of the loss data of an institution that calculates annual operational risk losses in accordance with Article 316(1). Competent authorities shall carry out such review at least every three years for an institution with a business indicator above EUR 1 billion. […]'	Article 322 Review of the comprehensiveness, accuracy and quality of the loss data 1. Institutions shall have in place the organisation and processes to review the comprehensiveness, accuracy and quality of the loss data independently. 2. Competent authorities shall ~~periodically~~ review the quality of the loss data of an institution that calculates annual operational risk losses in accordance with Article 316(1). ~~Competent authorities shall carry out such review at least every three years for an institution with a business indicator above EUR 1 billion.~~ **3. Institutions that do not meet the requirements set out in Articles 316, 317, 318, 319, 320 and 321 shall apply an internal loss multiplier of at least 1 and competent authorities may require these institutions to apply an internal loss multiplier greater than 1.** […]'

<u>*Explanation*</u>

Including the institution-specific Internal Loss Multiplier (ILM) in the calculation of own funds requirements for operational risks fosters sensitivity to the institution's operational risk profile observed

Text proposed by the European Commission	**Amendments proposed by the ECB**[2]
in their historical losses. In addition, the institution-specific ILM: (i) raises institutions' resilience to operational risk by ensuring an adequate coverage of own funds requirements against large losses; (ii) preserves similar variability levels over time; (iii) incentivises institutions to closely monitor their operational losses and implement strategies to reduce their operational risk profile; and (iv) ensures consistency between the Pillar 1 and Pillar 2 processes as both would be influenced by historical losses. Keeping institution-specific ILM in the calculation of own funds requirements for operational risks would be consistent with EBA advice (see recommendations OR 2 and OR 4 in the EBA's Policy Advice on the Basel III Reforms: Operational Risk[14]). This amendment proposal is summarised in paragraph 3.2 of the ECB Opinion. *The proposed new Article 313(a) introduces the rules for ILM calculation in accordance with the baseline implementation of the Standardised Approach for operational risk provided for in the Basel III standards. The internal review of the arrangements, processes and mechanisms to inform and keep updated the loss data set is needed to ensure the quality of the data used for the ILM computation.* *In Article 317(1), the singular 'date' is replaced with the plural 'dates' as there are diverse reference dates tied to operational risk events and losses as clarified in paragraph 4 of this Article.* *In Article 322(2) the suggested review of the loss data quality by the competent authorities every three years for the largest institutions would be disproportionately onerous compared with the impact of the loss data in the calculation of own funds requirements for operational risk, in particular if the loss data is not taken into account in this calculation. The ECB proposes in the new paragraph 3 that, if the quality of the loss data is poor, institutions should apply an ILM of at least 1 and competent authorities may require higher ILM values.*	
Amendment 66 Point (131) of Article 1 of the proposed regulation (Article 317(3) of the CRR)	
'(131) […] 3. For the purpose of paragraph 1, institutions shall: (a) include in the loss data set each operational risk event recorded during one or multiple financial years; (b) use a date no later than the date of accounting for including losses related to operational risk	'(131) […] 3. For the purpose of paragraph 1, institutions shall: (a) include in the loss data set each operational risk event recorded during one or multiple financial years; (b) use ~~a date no later than~~ the date of accounting for including losses related to operational risk

14 Available on the EBA website at www.eba.europa.eu

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td>events in the loss data set;
(c) allocate losses and related recoveries posted to the accounts over several years to the corresponding financial years of the loss data set, in line with their accounting treatment.
[…]’</td><td>events in the loss data set;
c) allocate losses and related recoveries posted to the accounts over several years to the corresponding financial years of the loss data set, in line with their accounting treatment.
[…]’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The date of accounting is the date when the related losses should be included in the loss data set. The original formulation may mislead institutions which may also consider a date before the actual accounting date of the losses.</td></tr>
<tr><td colspan="2">Amendment 67
Point (131) of Article 1 of the proposed regulation (Article 319(2) of the CRR)</td></tr>
<tr><td>‘(131)
[…]
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, …
[…]’</td><td>‘(131)
[…]
<s>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.</s>
2. <s>3.</s>In case of an operational risk event that leads to losses during more than one financial year, …
[…]’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The ECB proposes to delete paragraph 2 which introduces a second method to calculate the annual operational risk losses considering only risk events with a net loss equal to or above EUR 100 000. This method would only be used for disclosure according to Article 446 (Disclosure of operational risk). Actually, a lower threshold will be used to calculate the annual operational risk losses communicated to and reviewed by the competent authority (EUR 20 000) which also lead to inconsistency. Under the second calculation method, the annual operational risk losses which will be disclosed will only include low frequency and high impact risk events which will not reflect the actual risk profile of the institution and can be misleading.</td></tr>
</table>

Text proposed by the European Commission	**Amendments proposed by the ECB**[2]
Amendment 68 Point (131) of Article 1 of the proposed regulation (Article 323(1)(g) of the CRR)	
‘(131) […] (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. […]’	‘(131) […] ~~(g) internal validation processes that operate in a sound and effective manner;~~ ~~(h)~~ (g) transparent and accessible data flows and processes associated with the operational risk assessment system. […]’
<u>*Explanation*</u> *To put in place internal validation processes does not make sense as the own fund requirement calculation for operational risks is not based on an internal approach.*	
Amendment 69 Point (154)(d) of Article 1 of the proposed regulation (Article 325be(3) of the CRR)	
‘(d) […] 3. EBA shall develop draft regulatory technical standards to specify the criteria to assess the modellability of risk factors in accordance with paragraph 1, including where market data referred to in paragraph 2b are used, and the frequency of that assessment. […]’	‘(d) […] 3. EBA shall develop draft regulatory technical standards to specify the criteria to assess the modellability of risk factors in accordance with paragraph 1, including where market data ~~referred to in paragraph 2b~~ **provided by third-party vendors** are used, and the frequency of that assessment. […]’
<u>*Explanation*</u> *There is no paragraph 2b. The ECB assumes that this relates to previous drafting and that ‘market data provided by third-party vendors’ is meant.*	
Amendment 70 Point (156)(a) of Article 1 of the proposed regulation (Article 325bg(3) of the CRR)	

Text proposed by the European Commission	Amendments proposed by the ECB[2]
‘(a) […] 3. For each position of a given trading desk, an institution's compliance with the P&L attribution requirement as referred in to paragraph 1 shall lead to the identification of a precise list of risk factors that are deemed appropriate for verifying the institution's compliance with the back-testing requirement set out in Article 325bf.’	‘(a) […] ~~3. For each position of a given trading desk, an institution's compliance with the P&L attribution requirement as referred in to paragraph 1 shall lead to the identification of a precise list of risk factors that are deemed appropriate for verifying the institution's compliance with the back-testing requirement set out in Article 325bf.~~’
<u>*Explanation*</u> *The ECB proposes to delete this requirement. A solid basis in the text of the Basel Fundamental Review of the Trading Book for such a requirement seems to be missing and the purpose of such a requirement as well as the respective implications for its implementation and monitoring are unclear.*	
Amendment 71 Point (157)(a) of Article 1 of the proposed regulation (Article 325bh(1) of the CRR)	
‘(a) […] (i) for positions in CIUs, institutions shall look through the underlying positions of the CIUs at least on a weekly basis to calculate their own funds requirements in accordance with this Chapter; institutions that do not have adequate data inputs or information to calculate the own fund requirement for market risk of a CIU position in accordance with the look-through approach may rely on a third party to obtain those data inputs or information, provided that all the following conditions are met: […]’	‘(a) […] (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~~;~~**. If an institution looks through less regularly than daily, it shall identify, measure and monitor any risk occurring from its less than daily look through and avoid any significant risk underestimation.** ~~institutions~~ **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: […]’

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td colspan="2"><u>Explanation</u>

The ECB welcomes the clarity provided by the Commission proposal on the minimum frequency for look through if collective investment undertakings (CIUs) are included in the internal model. At the same time the ECB is concerned that the proposed minimum frequency might still lead to some risks not being included in the internal model, and therefore proposes to add an additional requirement for an institution to identify, measure and monitor the relevant risks resulting from its looking through less regularly than daily.</td></tr>
<tr><td colspan="2">Amendment 72

Point (166)(b) of Article 1 of the proposed regulation (Article 382(4), 382(4a) and (4b) of the CRR) (new)</td></tr>
<tr><td>‘(b) the following paragraphs 4a and 4b are inserted:

“4a. By way of derogation from paragraph 4, an institution may choose to calculate an own funds requirements for CVA risk, using any of the applicable approaches referred to in Article 382a, for those transactions that are excluded in accordance with paragraph 4, where the institution uses eligible hedges determined in accordance with Article 386 to mitigate the CVA risk of those transactions. Institutions shall establish policies to specify where they choose to satisfy their own funds requirements for CVA risk for such transactions.

4b. Institutions shall report to their competent authorities the results of the calculations of the own funds requirements for CVA risk for all the transactions referred to in paragraph 4. For the purposes of that reporting requirement, institutions shall calculate the own funds requirements for CVA risk using the relevant approaches set out in Article 382a(1), that they would have used to satisfy an own funds requirement for CVA risk if those transactions were not excluded from the scope in accordance with paragraph 4.”’</td><td>‘(b) paragraph 4 is deleted; ~~the following paragraphs 4a and 4b are inserted:~~

~~“4a. By way of derogation from paragraph 4, an institution may choose to calculate an own funds requirements for CVA risk, using any of the applicable approaches referred to in Article 382a, for those transactions that are excluded in accordance with paragraph 4, where the institution uses eligible hedges determined in accordance with Article 386 to mitigate the CVA risk of those transactions. Institutions shall establish policies to specify where they choose to satisfy their own funds requirements for CVA risk for such transactions.~~

~~4b. Institutions shall report to their competent authorities the results of the calculations of the own funds requirements for CVA risk for all the transactions referred to in paragraph 4. For the purposes of that reporting requirement, institutions shall calculate the own funds requirements for CVA risk using the relevant approaches set out in Article 382a(1), that they would have used to satisfy an own funds requirement for CVA risk if those transactions were not excluded from the scope in accordance with paragraph 4.”~~’</td></tr>
</table>

Text proposed by the European Commission	Amendments proposed by the ECB[2]
<u>*Explanation*</u> *The exemptions in paragraph 4 of Article 382 result in risks from uncovered credit valuation adjustment (CVA) risk not being included in Pillar 1. The ECB proposes to delete them. The supervision of exemptions creates additional efforts for both institutions and supervisors; especially if they are kept and complemented by new reporting requirements. Deviating here from Basel III standards creates international reputational risk. By deleting paragraph 4, there is no longer a need for paragraphs 4a and 4b.*	
Amendment 73 Point (169) of Article 1 of the proposed regulation (Article 383a(1)(d) and (e), Article 383c(5), second subparagraph, and Article 383f(2) of the CRR)	
‘(169) […] Article 383a Regulatory CVA model 1. […] (d) at each future time point, the simulated discounted future exposure of the portfolio of transactions with a counterparty is calculated with an exposure model by repricing all the transactions in that portfolio, based on the simulated joint changes of the market risk factors that are material to those transactions using an appropriate number of scenarios, and discounting the prices to the date of calculation using risk-free interest rates; (d) the regulatory CVA model is capable of modelling significant dependency between the simulated discounted future exposure of the portfolio of transactions with the counterparty's credit spreads; (e) where the transactions of the portfolio are included in a netting set subject to a margin agreement and daily mark-to-market valuation, […] Article 383c Interest rate risk factors	‘(169) […] Article 383a Regulatory CVA model 1. […] (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 **for each scenario**, based on the simulated joint changes of the market risk factors that are material to those transactions using an appropriate number of scenarios, and discounting the prices to the date of calculation using risk-free interest rates; ~~(d)~~**(e)** the regulatory CVA model is capable of modelling significant dependency between the simulated discounted future exposure of the portfolio of transactions with the counterparty's credit spreads; ~~(e)~~**(f)** where the transactions of the portfolio are included in a netting set subject to a margin agreement and daily mark-to-market valuation, […] Article 383c

Text proposed by the European Commission	Amendments proposed by the ECB[2]
[…] 5. […] Where the data on market-implied swap curves described in the first subparagraph of this paragraph are insufficient, the risk-free rates may be derived from the most appropriate sovereign bond curve for a given currency. […] Article 383f Reference credit spread risk factors […] 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. […]’	Interest rate risk factors […] 5. […] **6.** Where the data on market-implied swap curves described in the first subparagraph of this paragraph are insufficient, the risk-free rates may be derived from the most appropriate sovereign bond curve for a given currency. […] Article 383f Reference credit spread risk factors […] 2. The reference credit spread vega risk factor applicable to instruments in the CVA **portfolio** sensitive to reference credit spread volatility shall be the **implied** 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. […]’

<u>Explanation</u>

In point (d) of Article 383a(1), the ECB proposes to add the words ‘for each scenario’ as the repricing can only be done for the specific scenario – one scenario contains simulated (for that scenario) market data and the repricing needs to use these market data such that the new price can be assigned to the same scenario in a unique way.

Point (d) of paragraph 1 in that Article appears twice and should be renumbered together with paragraph (e), which then becomes (f). The ECB also notes that point (d) is referenced in the third subparagraph of Article 383a and it seems that here rather point (c) is meant.

Paragraph 5 of Article 383c contains a new item (insufficient market data) in its second subparagraph compared to its first subparagraph. The approach of subparagraph 4 cannot be applied to this new item and thus the second subparagraph should be a separately numbered paragraph 6, which will later also allow for more precise cross references.

The word ‘implied’ is inserted in paragraph 2 of Article 383f, because all vega risk factors are implied volatilities – not to be confused with e.g. historical volatilities that also occur in the CRR (even if outside the CVA section). This would also be consistent with other vega sensitivities, see e.g. Article 383d(2) of the CRR.

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td colspan="2"></td></tr>
<tr><td colspan="2" align="center">Amendment 74
Point (170) of Article 1 of the proposed regulation (Article 384(2) of the CRR)</td></tr>
<tr><td>‘(170)
[…]
2. An institution that meets the condition referred in to paragraph 1, point (b), shall calculate the own funds requirements for CVA risk as follows:
[…]’</td><td>‘(170)
[…]
<s>2.</s>3. An institution that meets the condition referred <s>in</s> to in paragraph 1, point (b), shall calculate the own funds requirements for CVA risk as follows:
[…]’</td></tr>
<tr><td colspan="2"> <u>Explanation</u> As there is already a paragraph 2, the second paragraph 2 should be renumbered to paragraph 3. Importantly, the articles on CVA use often decimal points rather than decimal commas – it is recommended to keep this convention consistent across legislation. </td></tr>
<tr><td colspan="2" align="center">Amendment 75
Point (182) of Article 1 of the Regulation (Article 434 of the CRR)</td></tr>
<tr><td>‘(182) Article 434 is replaced by the following:
 “Article 434
Means of disclosure 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</td><td>‘(182) Article 434 is replaced by the following:
 “Article 434
Means of disclosure <s>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.</s>
<s>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</s></td></tr>
</table>

Text proposed by the European Commission	Amendments proposed by the ECB[2]
make available on its website the date when the resubmission took place.	~~make available on its website the date when the resubmission took place.~~
EBA shall prepare and keep up-to-date the tool that specifies the mapping of the templates and tables for disclosures with those on supervisory reporting. The mapping tool shall be accessible to the public on the EBA website.	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.	Institutions may continue to publish a standalone document that provides a readily accessible source of prudential information for users of that information or a distinctive section included in or appended to the institutions' financial statements or financial reports containing the required disclosures and being easily identifiable to those users. Institutions may include in their website a link to the EBA website where the prudential information is published on a centralised manner.
2. Large institutions and other institutions that are not large institutions or small and non-complex institutions shall submit to EBA the disclosures referred to in Article 433a and Article 433c respectively, but not later than on the date of the publication of financial statements or financial reports for the corresponding period or as soon as	~~2. Large institutions and other institutions that are not large institutions or small and non-complex institutions shall submit to EBA the disclosures referred to in Article 433a and Article 433c respectively, but not later than on the date of the publication of financial statements or financial reports for the corresponding period or as soon as~~
possible thereafter. If disclosure is required to be made for a period when an institution does not prepare any financial report, the institution shall submit to EBA the information on disclosures as soon as practicable.	~~possible thereafter. If disclosure is required to be made for a period when an institution does not prepare any financial report, the institution shall submit to EBA the information on disclosures as soon as practicable.~~
3. EBA shall publish on its website the disclosures of small and non-complex institutions on the basis of the information reported by those institutions to competent authorities in accordance with Article 430.	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.
[…]"'	[…]"'

<u>*Explanation*</u>

For the sake of reducing the reporting burden of all institutions, the EBA should use supervisory reporting to compile the corresponding quantitative public disclosure for all institutions, rather than just for small and non-complex institutions (SNCIs). There is no need to develop a separate reporting

Text proposed by the European Commission	Amendments proposed by the ECB[2]
process for larger institutions, as it would lead to double reporting of data points and it may create inconsistencies between reporting and disclosure. Please note that, since qualitative disclosures and some quantitative disclosures cannot be extracted from supervisory reporting on the basis of the pre-defined mapping, the process to submit such disclosures to the EBA, from both SNCIs and other institutions, should be clarified in the legal text.	
Amendment 76 Point (183) of Article 1 of the proposed regulation (Article 434a of the CRR)	
'(183) […] (a) […] EBA shall develop draft implementing technical standards to specify uniform disclosure formats, the associated instructions, information on the resubmission policy and IT solutions for disclosures required under Titles II and III. […]'	'(183) […] (a) […] EBA shall develop draft implementing technical standards to specify uniform **reporting and** disclosure formats, the associated instructions, information on the resubmission policy and IT solutions for reporting and disclosures required under Titles II and III. **EBA shall ensure that disclosures in accordance with this Regulation do not exceed reporting in accordance with Part Seven A.** […]'
<u>*Explanation*</u> *The ECB proposes to amend the proposed first subparagraph of Article 434a of the CRR. The envisaged resubmission policy should not be limited to public disclosure and should cover both public disclosure and supervisory reporting to ensure consistency. Moreover, the principle that Pillar III disclosures should not exceed reporting should be reinforced, as current exceptions applied for ESG and interest rate risks in the banking book (IRRBB) disclosures may lead to unnecessary and burdensome ad hoc reporting requests.*	
Amendment 77 Point (187) of Article 1 of the proposed regulation (Article 446(2) of the CRR)	
'(187) […] 2. Institutions that calculate their annual	'(187) […] 2. Institutions that calculate their annual

Text proposed by the European Commission	Amendments proposed by the ECB[2]
operational risk losses in accordance with Article 316(1) shall disclose the following information in addition to the information listed in paragraph 1: (a) their annual operational risk losses for each of the last ten years, calculated in accordance with Article 316(1); (b) the number and amounts of operational risk losses that were excluded from the calculation of the annual operational risk loss in accordance with Article320(1), and the corresponding justifications for that exclusion.’	operational risk losses in accordance with Article 316(1) shall disclose the following information in addition to the information listed in paragraph 1: (a) their annual operational risk losses for each of the last ten years, calculated in accordance with Article 316(1); (b) the number and amounts of operational risk losses that were excluded from the calculation of the annual operational risk loss in accordance with Article 320(1), and the corresponding justifications for that exclusion~~.~~**;** **(c) the internal loss multiplier calculated in accordance with Article 313a;** **(d) the loss component calculated in accordance with Article 313a**.’
<u>*Explanation*</u> *The ECB recommends using the institution-specific ILM in the calculation of own funds requirements for operational risk (see Amendment 65) and thus institutions should be required to disclose their institution specific ILM and the underlying loss component. Disclosing these elements together with the business indicator component provides a complete picture of the drivers of the own funds requirements for operational risk and allows for consistency between the loss component and the annual losses that have to be disclosed anyway to be checked.*	
Amendment 78 Point (193) of Article 1 of the proposed regulation (Article 461a of the CRR)	
‘(193) Article 461a is replaced by the following: “Article 461a Own funds requirement for market risks The Commission shall monitor the implementation of the international standards on own funds requirements for market risk in third countries. Where significant differences between the Union implementation and third countries’ implementation of those international standards are observed,	‘(193) Article 461a is replaced by the following~~:~~ “Article 461a Own funds requirement for market risks ~~The Commission shall monitor the implementation of the international standards on own funds requirements for market risk in third countries. Where significant differences between the Union implementation and third countries’ implementation of those international standards~~

Text proposed by the European Commission	Amendments proposed by the ECB[2]
including as regards the impact of the rules in terms of own funds requirements and as regards their entry into application, the Commission shall be empowered to adopt a delegated act in accordance with Article 462 to amend this Regulation by:	~~are observed, including as regards the impact of the rules in terms of own funds requirements and as regards their entry into application, the Commission shall be empowered to adopt a delegated act in accordance with Article 462 to amend this Regulation by:~~
(a) applying, where necessary to deliver a level playing field, a multiplier equal to or greater than 0 and lower than 1 to the institutions' own funds requirements for market risk, calculated for specific risk classes and specific risk factors using one of the approaches referred to in Article 325(1), and laid out in:	~~(a) applying, where necessary to deliver a level playing field, a multiplier equal to or greater than 0 and lower than 1 to the institutions' own funds requirements for market risk, calculated for specific risk classes and specific risk factors using one of the approaches referred to in Article 325(1), and laid out in:~~
(i) Articles 325c to 325ay, specifying the alternative standardised approach;	~~(i) Articles 325c to 325ay, specifying the alternative standardised approach;~~
(ii) Articles 325az to 325bp, specifying the alternative internal model approach;	~~(ii) Articles 325az to 325bp, specifying the alternative internal model approach;~~
(iii) Articles 326 to 361, specifying the simplified standardised approach, to offset those observed differences between the third countries rules and Union law;	~~(iii) Articles 326 to 361, specifying the simplified standardised approach, to offset those observed differences between the third countries rules and Union law;~~
(b) postponing by two years the date from which institutions shall apply the own funds requirements for market risk set out in Part Three, Title IV, or any of the approaches to calculate the own funds requirements for market risk referred to in Article 325(1).'	~~(b) postponing by two years the date from which institutions shall apply the own funds requirements for market risk set out in Part Three, Title IV, or any of the approaches to calculate the own funds requirements for market risk referred to in Article 325(1).~~”’ **By 31 December 2025, the Commission shall submit a report to the European Parliament and to the Council, on the implementation of the international standards on own funds requirements for market risk in other jurisdictions. This report may be accompanied by a legislative proposal, if appropriate, in order to ensure a global level playing field."'**

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td colspan="2"><u>Explanation</u>
While the ECB acknowledges that the EU should be mindful of how other major jurisdictions implement the Basel III standards, it also calls on the EU to finalise the implementation of internationally agreed standards in a timely and faithful way so as to provide clarity to banks and ensure the soundness of the EU Single Rulebook. The possibility for postponing the implementation by two more years might especially have negative implications on banks' internal implementation plans and therefore could create issues in the application and approval process for internal models. Therefore, the ECB proposes to amend Article 461a to provide a new mandate for the Commission to report on the implementation in other jurisdictions and to submit a legislative proposal, if appropriate, in order to ensure a global level playing field.</td></tr>
<tr><td colspan="2">Amendment 79
Point (196) of Article 1 of the proposed regulation (Article 465(3), (4) and (5) of the CRR)</td></tr>
<tr><td>'(196)
[…]
3. By way of derogation from Article 92(5)(a), point (i), parent institutions, parent financial holding companies or parent mixed financial holding companies, stand-alone institutions in the EU or stand-alone subsidiary institutions in Member States may, until 31 December2032, assign a risk weight of 65 % to exposures to corporates for which no credit assessment by a nominated ECAI is available provided that that entity estimates the PD of those exposures, calculated in accordance with Part Three, Title II, Chapter 3, is no higher than 0,5 %.
EBA shall monitor the use of the transitional treatment laid down in the first subparagraph and the availability of credit assessments by nominated ECAIs for exposures to corporates. EBA shall report its findings to the Commission by 31 December 2028.
On the basis of that report and taking due account of the related internationally agreed standards developed by the BCBS, the Commission shall, where appropriate, submit to the European</td><td>'(196)
[…]
~~3. By way of derogation from Article 92(5)(a), point (i), parent institutions, parent financial holding companies or parent mixed financial holding companies, stand-alone institutions in the EU or stand-alone subsidiary institutions in Member States may, until 31 December2032, assign a risk weight of 65 % to exposures to corporates for which no credit assessment by a nominated ECAI is available provided that that entity estimates the PD of those exposures, calculated in accordance with Part Three, Title II, Chapter 3, is no higher than 0,5 %.~~
~~EBA shall monitor the use of the transitional treatment laid down in the first subparagraph and the availability of credit assessments by nominated ECAIs for exposures to corporates. EBA shall report its findings to the Commission by 31 December 2028.~~
~~On the basis of that report and taking due account of the related internationally agreed standards developed by the BCBS, the Commission shall, where appropriate, submit to the European~~</td></tr>
</table>

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Parliament and to the Council a legislative proposal by 31 December 2031.	~~Parliament and to the Council a legislative proposal by 31 December 2031.~~
4. By way of derogation from Article 92(5)(a), point (iv), parent institutions, parent financial holding companies or parent mixed financial holding companies, standalone institutions in the EU or stand-alone subsidiary institutions in Member States shall, until 31 December 2029, replace alpha by 1 in the calculation of the exposure value for the contracts listed in Annex II in accordance with the approaches set out in Part Three, Title II, Chapter 6, Sections 3 and 4, where the same exposure values are calculated in accordance with the approach set out in Part Three, Title II, Chapter 3, Section 6 for the purposes of the total un-floored risk exposure amount.	~~4. By way of derogation from Article 92(5)(a), point (iv), parent institutions, parent financial holding companies or parent mixed financial holding companies, standalone institutions in the EU or stand-alone subsidiary institutions in Member States shall, until 31 December 2029, replace alpha by 1 in the calculation of the exposure value for the contracts listed in Annex II in accordance with the approaches set out in Part Three, Title II, Chapter 6, Sections 3 and 4, where the same exposure values are calculated in accordance with the approach set out in Part Three, Title II, Chapter 3, Section 6 for the purposes of the total un-floored risk exposure amount.~~
The Commission may, having taken into account the EBA report referred to in Article 514, adopt a delegated act in accordance with Article 462 to permanently modify the value of alpha, where appropriate	~~The Commission may, having taken into account the EBA report referred to in Article 514, adopt a delegated act in accordance with Article 462 to permanently modify the value of alpha, where appropriate.~~’
5. By way of derogation from Article 92(5)(a), point (i), Member States may, allow parent institutions, parent financial holding companies or parent mixed financial holding companies, stand-alone institutions in the EU or stand-alone subsidiary institutions in Member States to assign the following risk weights provided that all the conditions in the second subparagraph are met.	~~5. By way of derogation from Article 92(5)(a), point (i), Member States may, allow parent institutions, parent financial holding companies or parent mixed financial holding companies, stand-alone institutions in the EU or stand-alone subsidiary institutions in Member States to assign the following risk weights provided that all the conditions in the second subparagraph are met.~~
(a) until 31 December 2032, a risk weight of 10 % to the part of the exposures secured by mortgages on residential property up to 55 % of the property value remaining after any senior or pari passu ranking liens not held by the institution have been deducted,	~~(a) until 31 December 2032, a risk weight of 10 % to the part of the exposures secured by mortgages on residential property up to 55 % of the property value remaining after any senior or pari passu ranking liens not held by the institution have been deducted,~~
(b) until 31 December 2029, a risk weight of 45% to any remaining part of the exposures secured by mortgages on residential property up to 80 % of the property value remaining after any senior or *pari passu* ranking liens not held by the institution have been deducted,	~~(b) until 31 December 2029, a risk weight of 45% to any remaining part of the exposures secured by mortgages on residential property up to 80 % of the property value remaining after any senior or *pari passu* ranking liens not held by the institution have been deducted,~~

Text proposed by the European Commission	Amendments proposed by the ECB[2]
provided that the adjustment to own funds requirements for credit risk referred to in Article 501 is not applied.	~~provided that the adjustment to own funds requirements for credit risk referred to in Article 501 is not applied.~~
For the purposes of assigning the risk weights in accordance with the first subparagraph, all of the following conditions shall be met:	~~For the purposes of assigning the risk weights in accordance with the first subparagraph, all of the following conditions shall be met:~~
(a) the qualifying exposures are located in the Member State that has exercised the discretion;	~~(a) the qualifying exposures are located in the Member State that has exercised the discretion;~~
(b) over the last six years the institution's losses on the part of such exposures up to 55 % of the property value do not exceed on average 0,25 % of the total amount, across all such exposures, of credit obligations outstanding in a given year;	~~(b) over the last six years the institution's losses on the part of such exposures up to 55 % of the property value do not exceed on average 0,25 % of the total amount, across all such exposures, of credit obligations outstanding in a given year;~~
(c) for the qualifying exposures the institution has both the following claims in the event of the default or non-payment of the obligor:	~~(c) for the qualifying exposures the institution has both the following claims in the event of the default or non-payment of the obligor:~~
(i) a claim on the residential immovable property securing the exposure;	~~(i) a claim on the residential immovable property securing the exposure;~~
(ii) a claim on the other assets and income of the obligor;	~~(ii) a claim on the other assets and income of the obligor;~~
(d) the competent authority has verified that the conditions in points (a), (b) and (c) are met.	~~(d) the competent authority has verified that the conditions in points (a), (b) and (c) are met.~~
Where the discretion referred to in the first subparagraph has been exercised and all the associated conditions in the second subparagraph are met, institutions may assign the following risk weights to the remaining part of the exposures referred to in the second subparagraph, point (b), until 31 December 2032:	~~Where the discretion referred to in the first subparagraph has been exercised and all the associated conditions in the second subparagraph are met, institutions may assign the following risk weights to the remaining part of the exposures referred to in the second subparagraph, point (b), until 31 December 2032:~~
(a) 52,5 % during the period from 1 January 2030 to 31 December 2030;	~~(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;	~~(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.	~~(c) 67,5 % during the period from 1 January~~

Text proposed by the European Commission	Amendments proposed by the ECB[2]
When Member States exercise that discretion, they shall notify EBA and substantiate their decision. Competent authorities shall notify the details of all the verifications referred to in the first subparagraph, point (c), to EBA. EBA shall monitor the use of the transitional treatment in the first subparagraph and report to the Commission by 31 December 2028 on the appropriateness of the associated risk weights. On the basis of that report and taking due account of the related internationally agreed standards developed by the BCBS, the Commission shall, where appropriate, submit to the European Parliament and to the Council a legislative proposal by 31 December 2031.’	~~2032 to 31 December 2032.~~ ~~When Member States exercise that discretion, they shall notify EBA and substantiate their decision. Competent authorities shall notify the details of all the verifications referred to in the first subparagraph, point (c), to EBA.~~ ~~EBA shall monitor the use of the transitional treatment in the first subparagraph and report to the Commission by 31 December 2028 on the appropriateness of the associated risk weights.~~ ~~On the basis of that report and taking due account of the related internationally agreed standards developed by the BCBS, the Commission shall, where appropriate, submit to the European Parliament and to the Council a legislative proposal by 31 December 2031.~~’

Explanation

The ECB recommends the deletion of paragraph 3. Relying on a bank’s own PD estimates for a lower risk weight to unrated corporates could damage the very purpose of the output floor, which is to protect against underestimation of risks by banks’ own models. This is a material deviation from CRE20.46 of the Basel III standards which, as an alternative to directly recognising external ratings for a corporate, permits a lower risk weight for being ‘investment grade’, but only for those corporates which have securities outstanding on a recognised securities exchange. Such corporates usually do have an external rating for these outstanding securities, which banks can use for their investment grade assessments. Thus, this risk weight is just not applicable to unrated corporates.

The underestimated loss risk could already become material during the transitional period until the output floor is fully phased in, but would raise even more concerns should the Commission exercise the proposed delegated power and make this deviation permanent.

The ECB also recommends the deletion of paragraph 4. It should be avoided that alpha=1 is set both for the output floor and for own funds requirements for counterparty credit risk, be it temporarily or permanently. The Standardised Approach for counterparty credit risk (SA-CCR) has been calibrated with alpha = 1.4 consistently with the calibration of the internal models method (IMM), which has for all Single Supervisory Mechanism (SSM) banks (except one), an alpha of at least 1.4 to account for granularity adjustments and missing general wrong way risk in the exposure value. The SA-CCR addresses granularity adjustments and general wrong way risk even less than the IMM, being less risk-sensitive than the IMM, and hence a lower value of alpha for the SA-CCR would not be prudentially sound.

The ECB recommends that paragraph 5 should be deleted. In substance, low losses observed in the past by a single Member State, in particular over a short period of only six years, do not justify the

Text proposed by the European Commission	Amendments proposed by the ECB[2]

application of standardised risk weights to RRE exposures below those recalibrated under the Basel III standards which are based on a larger empirical dataset across different banks. Such limited loss observations are not sufficient for ensuring that losses will continue to be low also in the future, in particular over the typically rather long period of RRE exposures. Moreover, the Basel Committee's recalibration has already resulted in a significant decrease in the risk weight applied to the secured part of RRE exposures from 35% to 20%, though accompanied by a larger haircut of 45% to the property value, recognising 55% of the property value as effectively securing the exposure, compared to the 20% haircut currently applied under Article 125(2)(d) of the CRR, recognising 80% of the market value or mortgage lending value.

While the 45% risk weight for the part between 55% and 80% seems to be aimed at mitigating the transitional impact of the increased haircut, this flat risk weight on the other hand imprudently removes the sensitivity to the riskiness of the different obligors for a part of the exposure for which recoveries are likely to need to be retrieved to some extent from the obligor rather than from the residential immovable property.

Also, the 'dual recourse' condition in point (c), which requires a claim on the obligor in addition to the claim on the residential immovable property, is no justification for lower risk weights. In particular the loan splitting approach transposed by the EU already recognises such dual recourse because, while the risk weight for the secured part takes into account the recourse to the immovable property for the part secured by the property value after haircuts, the unsecured part receives the obligor risk weight thereby fully reflecting the additional recourse to the obligor.

Moreover, assigning the discretion for lower risk weights to the Member State where the property is located raises concerns about fragmentation within the EU. Moreover, deviating from the calibration under the Basel III standards, even transitionally for the output floor, could also hamper the international level playing field. Both the risk weight and the recognised percentage of the property value are calibrated to ensure a level playing field between jurisdictions that opt for the new whole-loan approach and those, including the EU, which allow the loan splitting approach because this is more sensitive to the riskiness of different obligors.

Finally, putting in place transitional arrangements that lower protections for the banks at a time when real estate vulnerabilities are becoming a pressing issue in several EU countries raises several concerns highlighted in paragraph 1.3 of the ECB Opinion.

Therefore, the ECB considers that the transitional arrangements proposed by paragraph 5 are not justified from a prudential and financial stability perspective.

Amendment 80

Point (197) of Article 1 of the proposed regulation (Article 494d of the CRR)

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td>‘(197)
[…]
By way of derogation from Article 149, paragraphs 1, 2 and 3, an institution may from 1 January 2025 until 31 December 2027, revert to the Standardised Approach for one or more of the exposure classes provided for in Article 147(2), where all the following conditions are met:
[…]’</td><td>‘(197)
[…]
By way of derogation from Article 149, paragraphs 1~~, 2~~ and 3, an institution may from 1 January 2025 until 31 December 2027, revert to the Standardised Approach for one or more of the exposure classes provided for in Article 147(2), where all the following conditions are met:
[…]’</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The ECB proposes removing the reference to paragraph 2 of Article 149. In fact, Article 494d is applicable only if an institution reverts to the Standardised Approach. Conversely, paragraph 2 of Article 149 is applicable only if an institution reverts to the use of LGD values and conversion factors referred to in Article 151(8).</td></tr>
<tr><td colspan="2">Amendment 81
Point (198) of Article 1 of the proposed regulation (Article 495(1), (2) and (3) of the CRR)</td></tr>
<tr><td>‘(198)
[…]
1. By way of derogation from Article 107(1), second subparagraph, institutions that have received the permission to apply the Internal Ratings Based Approach to calculate the risk weighted exposure amount for equity exposures shall, until 31 December 2029, calculate the risk weighted exposure amount for each equity exposure for which they have received the permission to apply the Internal Ratings Based Approach as the higher of the following:
[…]

2. Instead of applying the treatment laid down in paragraph 1, institutions that have received the permission to apply the Internal Ratings Based</td><td>‘(198)
[…]
1. By way of derogation from Article 107(1)~~,~~ ~~second subparagraph~~, institutions that have received the permission to apply the Internal Ratings Based Approach to calculate the risk weighted exposure amount for equity exposures shall, until 31 December 2029, calculate the risk weighted exposure amount for each equity exposure for which they have received the permission to apply the Internal Ratings Based Approach as the higher of the following:
[…]

2. Instead of applying the treatment laid down in paragraph 1, institutions that have received the permission to apply the Internal Ratings Based</td></tr>
</table>

Text proposed by the European Commission	Amendments proposed by the ECB[2]
Approach to calculate the risk weighted exposure amount for equity exposures may choose to apply the treatment set out in Article 133 and the transitional arrangements in Article 495a to all of their equity exposures at any time until 31 December 2029. […] 3. Institutions applying the treatment laid down in paragraph 1 shall calculate EL in accordance with Article 158, paragraphs 7, 8 or 9, as applicable, as those paragraphs stood on 1 January 2021. […]’	Approach to calculate the risk weighted exposure amount for equity exposures may choose to apply the treatment set out in Article 133**,** ~~and~~ **but without applying** the transitional arrangements in Article 495a**,** to all of their equity exposures at any time until 31 December 2029. […] 3. Institutions applying the treatment laid down in paragraph 1 shall calculate EL in accordance with Article 158, paragraphs 7, 8 or 9, as applicable, as those paragraphs stood on ~~1 January 2021~~**[day before the date of entry into force of the proposed regulation]**. **Expected loss amounts calculated in accordance with Article 158, paragraphs 7, 8 or 9, as applicable, as those paragraphs stood on [day before the date of entry into force of the proposed regulation] shall be deducted from Common Equity Tier 1 items under Article 36(1), point (d).** […]’

<u>*Explanation*</u>

The ECB proposes removing the incorrect reference to the second subparagraph of Article 107(1) in paragraph 1.

The ECB proposes to not allow the transitional arrangements in Article 495a for the purposes of the alternative treatment set out in paragraph 2. Applying these additional arrangements for paragraph 2 would be in conflict with the ‘higher of’ condition in paragraph 1, because paragraph 2 would always limit the risk weight to that required by the transitional arrangements in Article 495a, whereas paragraph 1 could result in any higher IRB risk weight that was applicable before the proposed regulation. As a consequence, no bank would choose paragraph 1 because paragraph 2 would be more lenient. The transitional extraordinary drop in own funds requirements for equity exposures of institutions with permission for the IRB Approach, below the level that will be permanently required in the future, raises concerns from a supervisory perspective. This is why CRE90.3 of the Basel III standards allows this alternative only for requiring the fully phased-in Standardised Approach treatment from the outset, consequently the transitionally lower risk weights for equity exposure are not permitted for this alternative approach.

The ECB also proposes specifying in paragraph 3 that the expected loss (EL) amounts calculated under

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td colspan="2">that paragraph are deducted from Common Equity Tier 1 items under Article 36(1), point (d). In fact, Article 158 is relevant for the calculation of EL amounts, but it does not require such EL amounts to be deducted. Article 159 requires only EL amounts calculated in accordance with Article 158(5), (6) and (10) to be deducted. As a consequence, without the proposed addition, EL amounts calculated in accordance with Article 158, paragraphs 7, 8 or 9, might not be understood to be deductible from Common Equity Tier 1 items under Article 36(1)(d).</td></tr>
<tr><td colspan="2">Amendment 82
Point (199) of Article 1 of the proposed regulation (Article 495a(3) of the CRR)</td></tr>
<tr><td>‘(199)
[…]
Article 495a
Transitional arrangements for equity exposures
[…]
3. By way of derogation from Article 133, institutions may continue to assign the same risk weight that was applicable as of [OP please insert the date = one day before the date of entry into force of this amending Regulation] to equity exposures to entities of which they have been a shareholder at [adoption date] for six consecutive years and over which they exercise significant influence in the meaning of Directive 2013/34/EU, or the accounting standards to which an institution is subject under Regulation (EC) No 1606/2002, or a similar relationship between any natural or legal person and an undertaking.
[…]’</td><td>‘(199)
[…]
Article 495a
Transitional arrangements for equity exposures
[…]
<s>3. By way of derogation from Article 133, institutions may continue to assign the same risk weight that was applicable as of [OP please insert the date = one day before the date of entry into force of this amending Regulation] to equity exposures to entities of which they have been a shareholder at [adoption date] for six consecutive years and over which they exercise significant influence in the meaning of Directive 2013/34/EU, or the accounting standards to which an institution is subject under Regulation (EC) No 1606/2002, or a similar relationship between any natural or legal person and an undertaking.</s>
[…]</td></tr>
<tr><td colspan="2"><u>Explanation</u>
The ECB recommends the deletion of point (3) of Article 495a. The fact that an institution’s equity exposure to an entity is a longer lasting ‘strategic investment’ in that entity over which the institution exercises significant influence does not justify in itself permanently maintaining a 100% risk weight. A risk weight of 100% is the same as for unrated senior debt. Thus, this cannot reflect the higher risk of being subordinated in equity with only a residual claim on whatever remains after satisfying other claims in case of the default of that entity. The nature of a ‘strategic investment’ in an entity does not reduce the risk to that institution of a more senior claim on that entity.
That ‘strategic investments’ have a relatively lower risk compared to speculative equity investments is already acknowledged by footnote 1 to CRE20.58 of the Basel III standards, to be implemented by the</td></tr>
</table>

Text proposed by the European Commission	Amendments proposed by the ECB[2]
proposed Article 133(4) of the CRR, which excludes from the category of speculative equity investments any investments which an institution has with the intention of establishing a long-term business relationship. However, this solely justifies the same risk weight for such strategic investments as for any other non-speculative equity investments, but not the same risk weight as for senior claims.	
Amendment 83 Point (199) of Article 1 of the proposed regulation (Article 495d of the CRR)	
‘(199) […] Article 495d Transitional arrangements for unconditional cancellable commitments 1. By way of derogation from Article 111(2), institutions shall calculate the exposure value of an off-balance sheet item in the form of unconditionally cancellable commitment by multiplying the percentage provided for in that Article by the following factors: (a) 0 % during the period from 1 January 2025 to 31 December 2029; (b) 25 % during the period from 1 January 2030 to 31 December 2030; (c) 50 % during the period from 1 January 2031 to 31 December 2031; (d) 75 % during the period from 1 January 2032 to 31 December 2032. 2. EBA shall prepare a report to assess whether the derogation referred to in paragraph 1, point (a), should be extended beyond 31 December 2032 and, where necessary, the conditions under which that derogation should be maintained. EBA shall submit the report on its finding to the European Parliament, to the Council, and to the Commission, by 31 December 2028. On the basis of that report and taking due account of the related internationally agreed standards	‘(199) […] ~~Article 495d~~ ~~Transitional arrangements for unconditional cancellable commitments~~ ~~1. By way of derogation from Article 111(2), institutions shall calculate the exposure value of an off-balance sheet item in the form of unconditionally cancellable commitment by multiplying the percentage provided for in that Article by the following factors:~~ ~~(a) 0 % during the period from 1 January 2025 to 31 December 2029;~~ ~~(b) 25 % during the period from 1 January 2030 to 31 December 2030;~~ ~~(c) 50 % during the period from 1 January 2031 to 31 December 2031;~~ ~~(d) 75 % during the period from 1 January 2032 to 31 December 2032.~~ ~~2. EBA shall prepare a report to assess whether the derogation referred to in paragraph 1, point (a), should be extended beyond 31 December 2032 and, where necessary, the conditions under which that derogation should be maintained.~~ ~~EBA shall submit the report on its finding to the European Parliament, to the Council, and to the Commission, by 31 December 2028.~~ ~~On the basis of that report and taking due account of the related internationally agreed standards~~

Text proposed by the European Commission	Amendments proposed by the ECB[2]
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.’	~~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.~~’

Explanation

The ECB recommends the deletion of the proposed Article 495d. Page 13 of the Commission’s proposal explains the rationale for this transitional deviation as ‘to allow the EBA to assess whether the impact of a 10% CCF for those commitments would not lead to unintended consequences for certain types of obligors that rely on those commitment as a source of flexible funding’. This rationale conflicts with the very purpose of own funds requirements for credit risk. The purpose of these requirements is to protect depositors and other creditors of institutions against losses arising from credit risk to which an institution is exposed. This core protective function would be damaged by applying zero or lower own funds requirements for the sake of obligors that rely on costs for their flexible funding that are not sustainable for institutions in view of the potential credit losses from such commitments.

Being unconditionally cancellable does not prevent additional drawings on credit lines by obligors that later default, which can cause credit losses on the additionally drawn amount. Institutions usually do not cancel such credit lines as long as they are not aware that a customer is in financial difficulties, and they usually do not perform another full assessment of the financial situation of the customer each time that customer draws some of an available credit line. The consequence is that unconditionally cancellable credit lines in practice are not always cancelled in time to prevent credit losses on additionally drawn amounts.

CRE20.100 of the Basel III standards, which is based on empirical evidence, has now addressed the previous gap in protection against credit losses from additional drawings on unconditionally cancellable credit lines, by requiring a credit conversion factor of at least 10% for any committed but still undrawn amount, even where the credit line is unconditionally cancellable without prior notice. This necessary correction must not be delayed by a phase-in period. Indeed, perpetuating this imprudent gap by a permanent deviation from the Basel III standards would be even more imprudent.

Amendment 84

Article 501 of the CRR (new)

No text	‘**Article 501 is deleted.**’

Explanation

The ECB proposes that Article 501 be deleted. The reason for the current SME supporting factor has been explained in recital 59 of Regulation (EU) 2019/876 as follows: ‘Given the fact that SMEs carry a lower systematic risk than larger corporates, capital requirements for SME exposures should be lower than those for large corporates to ensure an optimal bank financing of SMEs.’

<table>
<tr><th>Text proposed by the European Commission</th><th>Amendments proposed by the ECB[2]</th></tr>
<tr><td colspan="2">

The Basel Committee has now acknowledged this reasoning in its revision of the Standardised Approach for credit risk. Based on Quantitative Impact Study (QIS) data, the Basel Committee has empirically calibrated the risk weight at 85%, which CRE20.47 of the Basel III standards applies to the full exposure to unrated SMEs, unless the exposure qualifies for the 75% risk weight for retail SME exposures. This calibration is consistent, on average across the range of different PDs, with the calibration of the firm-size adjustment to the risk weight for IRB exposures to SMEs according to CRE31.8 of the Basel III standards.

The calibration of the current SME supporting factor in Article 501 of the CRR is, for any amount owed beyond EUR 2.5 million, the same as that of the 85% risk weight under the Basel III standards. However, given the 100% risk weight for unrated corporates, the risk weight resulting from the factor of 0,7619 applied to the first EUR 2.5 million amount owed is lower than the 85% risk weight required by the Basel III standards.

Given that the final Basel III standards have been more recently calibrated on a broad empirical basis, using QIS data from both group 1 and 2 banks, these new standards should be considered for the CRR calibration.

Further, and more importantly, the 75% risk weight for retail SME exposures under the Standardised Approach implemented by Article 123 of the CRR, as well as the firm-size adjustment to the risk weight for IRB exposures to SMEs implemented by Article 153(4) of the CRR, already acknowledge a lower systematic risk of SMEs. It is therefore not justifiable to further reduce the risk weights by applying the SME supporting factor to these exposures, as this would take the same lower systematic risk of SMEs into account twice.

The remaining justifiable scope of the SME supporting factor is limited to the same scope as the 85% risk weight, which the Basel III standards apply to non-retail exposures to SMEs under the Standardised Approach. Full consistency with the empirical calibration under the final Basel III standards can therefore be best achieved by replacing the separate SME supporting factor by an 85% risk weight that applies directly to non-retail exposures to unrated SMEs under the Standardised Approach, as part of the risk weights for unrated corporates exposures according to Article 122(2) of the CRR.

</td></tr>
<tr><td colspan="2">Amendment 85
Point (201) of Article 1 of the Regulation (Article 501a of the CRR)</td></tr>
<tr><td>‘(201) Article 501a(1) is amended as follows:
[…]’</td><td>‘(201) ~~Article 501a(1) is amended as follows:~~
~~[…]~~ **Article 501a is deleted.**’</td></tr>
<tr><td colspan="2">

<u>*Explanation*</u>

The ECB proposes that Article 501a of the CRR is deleted. The reason for the current infrastructure supporting factor has been explained in recital 61 of Regulation (EU) 2019/876 as follows: ‘In order to

</td></tr>
</table>

Text proposed by the European Commission	Amendments proposed by the ECB[2]

encourage private and public investments in infrastructure projects it is essential to lay down a regulatory environment that is able to promote high quality infrastructure projects and reduce risks for investors. In particular, own funds requirements for exposures to infrastructure projects should be reduced, provided they comply with a set of criteria able to reduce their risk profile and enhance predictability of cash flows.'

The Basel Committee has now acknowledged this reasoning in its revision of the Standardised Approach for credit risk. CRE20.52 of the Basel III standards defines criteria for 'high quality project finance'. Based on QIS data, the Basel Committee has empirically calibrated the risk weight at 80%.

Given that the criteria for reduced risk profile and enhanced predictability have now been internationally standardised, the CRR scope needs to be limited to allow a lower risk weight exclusively for those exposures which meet these criteria. As the final Basel III standards have been more recently calibrated on a broad empirical basis, using QIS data from both group 1 and 2 banks, these new standards should be considered for the CRR calibration.

Article 122a(3)(c)(ii) of the CRR implements the criteria for 'high quality project finance' under the Basel III standards and the 80% risk weight. However, it currently only provides for those exposures for which the infrastructure supporting factor is not applied. As a consequence, exposures which do not meet these criteria would nevertheless receive a lower risk weight if they meet the deviating criteria according to Article 501a(1) of the CRR. Moreover, the factor of 0,75 for such exposure results in a 75% risk weight that is unjustifiably lower than the 80% for 'high quality project finance'. More importantly, the factor of 0,75 would unjustifiably reduce the 130% risk weight during the pre-operational phase. The Basel III standards do not acknowledge any lower risk of 'high quality project finance' during this phase, due to the increased uncertainties before a project becomes fully operational and effectively generates the net cash flows required for repaying the received financing. Finally, applying the infrastructure supporting factor also to IRB exposures unjustifiably takes the same lower risk profile into account twice because the lower risk profile is already reflected by the IRB approaches for specialised lending exposures. Where an institution is able to estimate the PD independently from the LGD, a lower profile should already be reflected in these risk parameter estimates. Otherwise, the lower risk profile should be reflected in an institution's assignment to the categories under the slotting approach, where, in particular, category 1 applies risk weights of only 50% or 70% according to Table 1 of Article 153(5) of the CRR.

Consequently, full alignment with the Basel III standards requires deleting the whole infrastructure supporting factor in Article 501a of the CRR, which then also allows the restriction to the scope of the 80% for 'high quality project finance' to be removed in Article 123a(3)(c)(ii) of the CRR.