EBA/GL/2025/03

27 June 2025

Final Report

Guidelines on ADC exposures to residential property under Article 126a of Regulation (EU) 575/2013

Contents

Executive Summary

The EU implementation of the Basel III framework introduces in Article 4(1), point 79, of the Regulation (EU) 575/2013 (CRR) a new definition for a subset of exposures covering exposures related to Acquisition, Development, and Construction (ADC), which relate to exposures to corporates or special purpose entities (SPVs) financing any land acquisition for development and construction purposes, or financing development and construction of any residential or commercial immovable property. These ADC exposures are considered to be associated with heightened risk and consequently a specific risk weight of 150% is set out in Article 126a of the CRR. Notwithstanding institutions may apply a risk weight of 100% to ADC exposures to residential property provided that certain risk-mitigating conditions are met.

The EBA is in this regard mandated under Article 126a(3) of the CRR to specify the following terms identifying the credit risk-mitigating conditions listed under paragraph 2 of the same article related to the following elements:

a) Substantial cash deposits;

b) Financing ensured in an equivalent manner;

c) Appropriate amount of obligor-contributed equity;

d) Significant portion of total contracts.

With respect to the definition of the substantial cash deposit, two separate threshold levels have been established for, on the one hand, pre-sale contracts (i.e., not lower than 10% of the sale price) and, on the other hand, for pre-lease contracts (i.e., not lower than 3 times the monthly rent) to assign the 100% risk weight.

With respect to the term “financing ensured in an equivalent manner”, the GLs specify that equivalents to the cash deposit are to be exclusively considered as instalments paid and cash held in a segregated account, both subject to forfeiture if the contract is terminated.

Regarding the appropriate amount of obligor-contributed equity, the GLs define a closed list of 5 elements that can be considered as forms of equity. The GLs require the ratio not to be below 25%, in order to apply the risk weight of 100% to ADC exposures to residential property.

Finally, in order to determine whether the portion of total contracts is significant, the CP introduces two separate ratios for pre-sale/sale and pre-lease/lease contracts, proposing a 50% for both thresholds:

- pre-sale/sale - Credit facility based: (sum of the sales price of the 'eligible'[1] contracts signed) over (credit facility including the drawn amount and undrawn amount, granted to the borrower to finance the ADC project)

- pre-lease/lease - Simple number: (Number of 'eligible' contracts signed) over the total number of potential contracts.

By carrying out this mandate, the EBA is required to take into account the specificities of institutions' lending to public housing or not-for profit entities across the Union that are regulated by law and that exist to serve social purposes and to offer tenants long-term housing. In this regard, a specific framework has been defined in the GLs, which in any case is optional compared to the general one at the discretion of credit-granting institutions. This framework stipulates that social housing projects can benefit from a 100% RW when the number of applicants for social housing units exceeds the number of units available for lease at the project level, or if not available, at municipality level (via the condition "significant" share of sale contract). Otherwise, social housing projects can still benefit from the 100% RW via the usual thresholds. In this context, the condition for the equity at risk is adjusted in two ways: the threshold is lowered by 5% compared to the general framework (i.e. at 20%), and Subsidies and grants committed (i.e. not already paid, as in the general framework) to the obligor for project costs are now allowed in the equity calculation.

Accordingly, these guidelines provide a harmonized framework at European level for the treatment of these exposures, ensuring comparability of own funds requirements and ultimately achieving a level playing field across the EU.

[1] 'eligible' contracts refer to pre-lease and/or pre-sale contracts with a substantial cash deposit subject to forfeiture and/or sale and/or lease contracts.

Background and rationale

Article 126a of the CRR introduces under the standardised approach for credit risk a new category of exposures called ADC exposures within the class of exposures secured by mortgages on immovable property. These exposures are associated with heightened risk and therefore attract a risk-weight of 150%. Institutions may however apply a risk weight of 100% to ADC exposures to residential property when, besides engaging in sound originating and monitoring standards, certain conditions reducing the credit risk of the exposure are met. More specifically, these conditions are listed in Article 126a(2) of the CRR, which states that a significant proportion of total contracts must consist of pre-sale and pre-lease agreements with substantial cash deposits, or sale and lease contracts (or where financing is ensured in an equivalent manner), and/or an appropriate amount of obligor-contributed equity to the residential property value upon completion.

These guidelines specify the terms under Article 126a of the CRR related to the credit risk reducing conditions that must be met to apply the 100% risk weight for ADC exposures to residential property. In line with the mandate, these guidelines also take into account the specificities of institutions' lending to public housing or not-for profit entities across the Union that are regulated by national law and that exist to serve social purposes and to offer tenants long-term housing.

1.1 Substantial Cash Deposit

One of the credit risk-reducing factors mentioned in Article 126a(2)(a) of the CRR is that of legally binding pre-sale or pre-lease contracts for which the purchaser or tenant has made a substantial cash deposit, which is subject to forfeiture if the contract is terminated. These guidelines aim to define the level at which the cash deposit is considered substantial. The cash deposit should be substantial enough to serve as an incentive for the purchaser or tenant to convert the pre-sale and pre-lease contracts into sale and lease contracts, thereby effectively reducing the risk of the default of the obligor of the ADC exposure, or should at least be sufficient for compensating a market price deterioration in case the pre-sale or pre-lease contract is not converted but terminated, so that the property cannot be sold or rented out at the originally expected price by the obligor. In addition to the condition of considering only pre-sale and pre-lease contracts for which the purchaser or tenant has made a substantial cash deposit which is subject to forfeiture if the contract is terminated, the CRR also further clarifies that the contracts to be considered should be legally binding. In this context, it may be useful to consider how specific contracts within an EU jurisdiction align with the broader categories of pre-sale/sale or pre-lease/lease contracts, taking into account the applicable national legislation of the country where the sale contract is legally binding. National Competent Authorities could, if necessary, provide further clarification on this matter.

1.2 Financing ensured in an equivalent manner

Article 126a(2)(a) of the CRR further requires considering alternative possibility to the requirement of a substantial cash deposit by considering cases "*where the financing is ensured in an equivalent manner*". The relationship of equivalence to the requirement for a "*substantial cash deposit*" is understood in these Guidelines as covering two points: (1) the obligor of the ADC exposure receives a specific amount of cash, and (2) the buyer or tenant forfeits this amount if the pre-sale/pre-lease contract is terminated. In this regard, in order to preserve the equivalence to the cash deposit from a risk perspective, instalments paid and cash held in a segregated account, both subject to forfeiture if the contract is terminated, are considered as ensuring the financing in an equivalent manner compared to a cash deposit.

1.3 Significant portion of total contracts

Finally, Article 126a(2)(a) of the CRR specifies that legally binding pre-sale or pre-lease contracts with a substantial cash deposit or where the financing is ensured in an equivalent manner, or legally binding sale or lease contracts, amount to a significant portion of total contracts. Therefore, while a substantial cash deposit or the financing ensured in an equivalent manner apply to each individual contract (meaning they must be satisfied to qualify pre-sale and pre-lease contracts in the computation of the significant portion of total contracts), the significant portion of total contracts is the ultimate condition that must be met for the allocation of the 100% risk weight. This condition is meant to mitigate the risk of the absence or scarcity of marketability of the ADC project (i.e. the source of repayment for the obligor of the ADC exposure), which can cause lower cash flows for repayment than projected (also depending on how long it takes to find a buyer or tenant, and the potential deterioration in market prices over this period) thereby reducing the risk borne by the financial institution granting the ADC exposure. Thus, only where the qualifying pre-sale or pre-lease contracts or sale or lease contracts already represent a significant portion of total contracts the assignment of a 100% risk weight instead of a 150% risk weight is justified from a risk perspective. It should be noted that the specification of the characteristics of these contracts is beyond the scope of these guidelines, but the legally binding pre-sale, sale, pre-lease, and lease contracts should be interpreted in line with the meaning and sense of the applicable national legislation of the country where the contract is legally binding.

1.4 Appropriate amount of obligor-contributed equity

The second possibility to assign a 100% risk weight to an ADC exposure provided in Article 126a(2)(b) of the CRR is that the obligor has substantial equity at risk, which is represented as an appropriate amount of obligor-contributed equity to the residential property's value upon completion. An appropriate amount of obligor-contributed equity can mitigate the risk of the ADC exposure by covering potential unexpected losses in case of adverse market price movements until a buyer/tenant is found and the price is fixed by sale/lease contract. To this end, these guidelines specify that the equity identified for the purpose of assigning the 100% risk weight must specifically be invested into the particular ADC project financed by the related ADC exposure, which poses the risk to the institution. In terms of this, improvements to the property at own cost of the obligor on top of received financing, including preparatory works such as the laying of sewers, water pipes, and similar improvements to land, should be considered obligor-contributed equity falling under one of the categories defined in these guidelines, specifically either category c) or d) as defined in paragraph 20 of these Guidelines, based on whether they are "physical" or monetary contributions. Lastly, the property value upon completion referred to in Article 126a(2)(b) of the CRR shall be understood as the value determined in accordance with Article 229(1) of the CRR, that is expected for the point in time when the immovable property will be finished.

1.5 Lending to public housing or not-for profit entities

A certain acknowledgement of the engagement and functions of public housing and not-for profit entities that are regulated by law and that exist to serve social purposes and to offer tenants long-term housing is mentioned in the EBA mandate to specify the criteria for assigning a risk weight of 100% instead of 150%. A common characteristic concerning public housing projects and entities operating on a not-for-profit basis with the aim of providing affordable housing to the general public is that the demand generally exceeds the supply of housing units, despite pre-lease contracts not being a common practice and being even illegal in some countries. For this reason, for the purpose of assigning a 100% risk weight, a specific framework is envisaged. This framework stipulates that social housing projects can benefit from a 100% RW when the number of applicants for social housing units exceeds the number of units available for lease at the project level, or if not available, at municipality level (via the condition “significant” share of sale contract). Otherwise, social housing projects can still benefit from the 100% RW via the usual thresholds. In this context, the condition for the equity at risk is adjusted in two ways: the threshold is lowered by 5% compared to the general framework, and subsidies and grants committed (i.e. not already paid, as in the general framework) to the obligor for project costs are now allowed in the equity calculation. In any case, the application of this specific framework for ADC exposures to public housing or not-for-profit entities is left to the discretion of the credit-granting institutions, which have the option to apply the general framework if deemed necessary from a risk perspective.

Guidelines

EBA/GL/2025/03

27/06/2025

Guidelines

on ADC exposures to residential property under Article 126a of Regulation (EU) 575/2013

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010[2]. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the guidelines.

2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g., by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by [dd.mm.yyyy – two months after the publication of the Guidelines in all EU official languages]. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website with the reference 'EBA/GL/2025/03'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.

4. Notifications will be published on the EBA website, in line with Article 16(3) of Regulation (EU) No 1093/2010.

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[2] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

2. Subject matter, scope and definitions

Subject matter

5. These guidelines specify, in accordance with Article 126a(3) of Regulation (EU) 575/2013 (CRR), the terms "substantial cash deposits", “financing ensured in an equivalent manner”, “appropriate amount of obligor-contributed equity”, and "significant portion of total contracts", taking into account the specificities of institutions´ lending to public housing or not-for profit entities across the Union that are regulated by law and that exist to serve social purposes and to offer tenants long-term housing, for the purposes of Article 126a(2) of that Regulation.

Scope of application

6. These guidelines apply in accordance with the scope of application of Article 126a of the CRR.

Addresses

7. These guidelines are addressed to competent authorities as defined in Article 4, point (2)(i) of Regulation (EU) No 1093/2010 and to financial institutions as defined in Article 4, point (1) of Regulation No 1093/2010.

Definitions

8. Unless otherwise specified, terms used and defined in CRR have the same meaning in the guidelines.

3. Implementation

Date of application

9. These guidelines apply from [dd.mm.yyyy – two months after the publication of the Guidelines in all EU official languages].

4. Legally binding contracts

Substantial Cash Deposit

10. For the purposes of Article 126a(2), point (a), of the CRR, the cash deposit made for a legally binding pre-sale contract should be considered as substantial where the following ratio is equal to or higher than 10%:

$$\frac{CD}{SP}$$

Where:

- CD: is the cash deposit paid by the purchaser which is subject to forfeiture if the pre-sale contract is terminated;
- SP: is the sale price as indicated in the pre-sale contract.

11. For the purposes of Article 126a(2), point (a), of the CRR, the cash deposit made for a legally binding pre-lease contract should be considered as substantial where the following ratio is equal to or higher than 300%:

$$\frac{CD}{MR}$$

Where:

- CD: is the cash deposit paid by the tenant which is subject to forfeiture if the pre-lease contract is terminated;
- MR: is the monthly rent as indicated in the pre-lease contract.

Financing ensured in an equivalent manner

12. For the purposes of Article 126a(2), point (a), of the CRR, the financing should be considered as ensured in a manner equivalent to cash deposits subject to forfeiture where all the following conditions are met:

    a. the purchaser or tenant paid instalments, or transferred cash to a segregated account;

    b. the instalments or segregated cash referred to in point (a) are subject to forfeiture if the pre-sale or pre-lease contract is terminated;

c. the amounts of instalments or segregated cash referred to in point (a) are substantial in accordance with the ratios referred to in paragraphs 10 and 11 of these Guidelines, for pre-sale contracts and pre-lease contracts, respectively.

Significant portion of total contracts

13. For the purpose of Article 126a(2)(a) of the CRR, the legally binding pre-sale and sale contracts and the legally binding pre-lease and lease contracts should be considered as amounting to a significant portion of total contracts where they represent a percentage equal to or higher than 50% of total contracts. That percentage should be calculated in accordance with paragraphs 14 to 16 of these Guidelines.

14. For pre-sale and sale contracts, the percentage referred to in paragraph 13 should be calculated as follows:

    a. In the numerator, the sum of the sale prices as specified in the following contracts related to the residential property:

        i. the legally binding pre-sale contracts with substantial cash deposit or financing ensured in an equivalent manner in accordance with paragraphs 10 and 12 of these Guidelines;

        and

        ii. the legally binding sale contracts;

    b. In the denominator, the total amount of the credit facility, including the drawn amount and undrawn amount, granted by the institution to the obligor to finance the ADC project related to the residential property.

15. In the event that the ADC project related to the residential property is financed through a syndicated loan or multiple loans, the institution should consider in the denominator under paragraph 14.b the sum of all loans and credit facilities provided by all institutions to finance the ADC project. For the purposes of calculating the ratio referred to in paragraph 14, in the case where a single credit facility finances a property whose intended use is partly for sale and partly for lease, the denominator must only reflect the portion of the credit facility that finances the construction intended for sale.

16. For pre-lease and lease contracts, the percentage referred to in paragraph 13 should be calculated as follows:

    a. In the numerator, the sum of:

i. the number of legally binding pre-lease contracts with substantial cash deposit or financing ensured in an equivalent manner in accordance with paragraphs 11 and 12 of these Guideline*s*;

and

ii. the number of legally binding lease contracts;

b. In the denominator, the total number of units that are part of the ADC project related to the residential property.

17. Where the intended use of the property is partly for sale and partly for lease, the institution shall calculate separate ratios, in accordance with paragraphs 14 and 15 for pre-sale and sale contracts and with paragraph 16 for pre-lease and lease contracts. The portion of total contracts should be deemed significant where each of the two ratios complies with the minimum ratio set out in paragraph 13 of these Guidelines.

18. Where the intended use of the property is partly for sale and partly for lease and where the institution grants separate facilities for the sales part and for the lease part, the ADC preferential risk-weight can be applied at facility level provided it can be ensured that the repayment of the sales facility (respectively leases facility) is only based on the sales (respectively leases) of the units. For this purpose, the institution shall calculate two separate ratios at facility level for the assessment of significant portion of total contracts.

5. Appropriate amount of obligor-contributed equity

19. The amount of obligor-contributed equity to the residential property value upon completion should be considered as appropriate for the purposes of Article 126a(2), point (b), of the CRR, where the ratio of the amount of the obligor-contributed equity to the residential property's value upon completion is equal to or higher than 25%.

20. For the purposes of paragraph 19 of these Guidelines, only those investments made by the obligor into the immovable property qualify as obligor contributed equity which, if any, convey for the obligor only a residual claim on the property, either in the form of own use of the property or via the cash flows generated by the sale or lease of the property, that is in particular subordinated to any claim the institution might have from the provided financing, and are investments in the form of one of the following or a combination thereof:

    a. Cash invested in the project and segregated from other assets of the obligor, available to cover the projected cost of the project, measured in the currency of the financing for the obligor and at the moment of the calculation of capital requirements;

    b. Subsidies and grants already invested to cover the incurred costs of the project or segregated from other assets of the obligor available to cover the projected cost of the project, measured in the currency of the financing for the obligor and at the moment of the calculation of capital requirements;

    c. Unencumbered readily marketable assets directly linked to the project and available to cover the projected cost of the project, should be measured in the currency of the financing for the obligor and valued at the market value of these assets at the time of calculating capital requirements. These assets should be easily sold or traded in the market. These assets should be contractually bound to be used for paying development or construction expenses linked to the project, and should be free from any legal claims, liens, or restrictions;

    d. Expenses for development or construction, paid out-of-pocket by the obligor in direct connection to the project, measured in the currency of the financing for the obligor and at the moment of the calculation of capital requirements;

    e. Land or improvements, paid out-of-pocket or already owned by the obligor, in direct connection to the project, measured in the currency of the financing for the obligor and at the market value at the moment of contribution of the obligor into the project.

21. Obligor-contributed equity is the total amount of investments qualified according to paragraph 20 that the obligor has already contributed, reduced by any excess costs currently expected for completing the immovable property. Excess costs are quantified by the difference, if positive, between total costs for completing the immovable property, both already incurred and still expected costs, and the property value upon completion measured as required by Article 229(1) CRR, i.e. as if the immovable property was already completed, taking into account the life of the loan and the potential for the current market value for such completed property to be significantly above the value that would be sustainable over the life of the loan. For the purposes of this definition, “excess costs” refers to the amount by which the total costs for completing the immovable property exceed the property value upon completion, and not the amount by which the costs exceed the estimated costs at origination.

6. Consideration of the specificities of lending to public housing or not-for-profit entities

22. ADC exposures to public housing or not-for profit entities across the Union that are regulated by law and that exist to serve social purposes and to offer tenants long-term housing should be subject to the treatment referred to in paragraph 23 and 24 where both of the following conditions are met:

    a. The intended use of the property is exclusively for lease;

    b. The property being financed is subject to a regulation specifying the eligibility to qualify for social/public housing, including criteria for applicants in relation to their income, their family size, their residency status, and requirements for the construction, including the size of each unit or being barrier-free.

23. For the ADC exposures mentioned in paragraph 22, the requirement for a significant portion of total contracts, as outlined in Article 126a(2)(a) of the CRR, should be considered fulfilled if, for the project under consideration and for each type of social housing units in the project, the number of applicants exceeds the number of social housing units available for lease. Where the number of applicants is not available for a specific project, but is available at municipality level, the comparison between the number of applicants for each type of social housing units and the number of social housing units available for lease can be performed at municipality level.

24. For the ADC exposures referred to in paragraph 22, the appropriate amount of obligor-contributed equity for the purposes of Article 126a(2), point (b), of the CRR should be set according to the requirements of the paragraphs 19 to 21 of these Guidelines, with the following adjustment:

    a. [Reducing the equity threshold]: the ratio of the amount of the obligor-contributed equity to the residential property's value upon completion referred to in paragraph 19 should be equal to or higher than 20%.

    b. [Allowing subsidies and grants committed to the obligor]: The subsidies and grants referred to in paragraph 20, point (b), also include the subsides and grants committed to the obligor in order to cover the incurred costs of the project, including subsidies committed in the form of funds derived from state-backed, unsecured junior loans with preferential interest rates, as measured in the currency of the financing for the obligor and at the moment of the calculation of capital requirements.

Accompanying documents

Cost-benefit analysis / impact assessment

Article 126a(3) of the CRR mandates the EBA to draft guidelines specifying the credit risk-mitigating conditions that ADC exposures should have to be eligible for a 100% preferential risk weight.

As per Article 16(2) of the ESAs regulation (Regulation (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010 of the European Parliament and of the Council), any guidelines developed by the ESAs shall be accompanied by an Impact Assessment (IA) annex which analyses 'the potential related costs and benefits' of the guidelines. Such annex shall provide the reader with an overview of the findings as regards the problem identification, the options identified to remove the problem and their potential impacts. The EBA prepared the IA included in this consultation paper analysing the policy options considered when developing the guidelines. Given the nature of the study, the IA is predominantly qualitative in nature.

Problem identification and baseline scenario

Article 4(1), point 79, of the CRR introduces a new definition for ADC exposures, which relates to exposures to corporates or special purpose entities (SPVs) financing any land Acquisition for Development and Construction purposes, or financing development and construction of any residential or commercial immovable property. As of December 2023[3], ADC exposures represented 0.5% of all SA exposures. If the Basel III rules were applied, RWAs to ADC exposures would represent 2.3% of the total SA RWAs. These ADC exposures are considered to be associated with heightened risk and are therefore assigned a 150% risk weight. However, a lower risk weight (100%) might be assigned provided that certain risk-mitigating conditions are met.

These conditions are listed in Article 126a(2) of the CRR, which states that a significant proportion of total contracts must consist of pre-sale and pre-lease contracts with substantial cash deposit, or sale and lease contracts (or where the financing is ensured in an equivalent manner) and/or an appropriate amount of obligor-contributed equity to the residential property value upon completion. However, those terms and conditions are not sufficiently specified in the CRR. Therefore, Article 126a(3) of the CRR mandates the EBA to specify those terms.

[3] Results based on December 2023 QIS data.

Policy objectives

The guidelines aim at specifying the list of terms identifying the credit risk-mitigating conditions listed under paragraph 2 of Article 126a of the CRR, taking into account the specificities of institutions' lending to public housing or not-for profit entities across the Union:

a) Substantial cash deposits;

b) Financing ensured in an equivalent manner;

c) Appropriate amount of obligor-contributed equity;

d) Significant portion of total contracts.

The general objective of the guidelines is to provide a harmonized framework at European level for the treatment of these exposures, ensuring comparability of own funds requirements and ultimately achieving a level playing field across the EU.

Options considered

When drafting the present guidelines, the EBA considered several policy options under four main areas:

A. The definition of substantial cash deposit: The EBA has analysed which should be the level at which the cash deposit is considered substantial. In order to define the adequate level of substantial cash deposit the following elements have been analysed:

- How to define the metric to measure the substantial cash deposit:

Option 1: Based on a simple relative ratio.

Option 2: Based on a combination of absolute and relative figures.

- The definition of the level of cash deposit:

Option 1: Based on average market practices.

Option 2: Based on risk-based calibration.

- The definition of "financed in an equivalent manner":

Option 1: restrictive definition.

Option 2: broader definition.

B. The definition of significant number of contracts: In addition to the conditions that need to be ensured per individual contract, the EBA has analysed different options for the definition of the significant proportion of contracts that need to comply with those conditions:

Option 1: credit facility based: ratio between

a. the sales price of the contracts signed, and

b. the credit facility including the drawn amount and undrawn amount, granted to the borrower to finance the ADC project.

Option 2: Weighted number: ratio between

c. the sales price of the contracts signed, and

d. the sales price of all the potential contracts.

Option 3: Simple number: ratio between

e. the number of contracts signed, and

f. the total number of potential contracts.

Option 4: combination: a combination of option 2 and 3 (for instance, requiring both ratios to be met)

C. To define the threshold for determining when the amount of obligor contributed equity can be considered appropriate, the EBA has explored the following 4 approaches:

Approach 1: $\frac{(Obligor- \ Contributed \ Equity)}{Property \ Value \ upon \ Completion}$. Under this approach, the obligor contributed equity is a direct observation, based on some 'accounting' figures.

Approach 2: $\frac{(Property \ Value \ upon \ Completion - Total \ Loans)}{Property \ Value \ upon \ Completion}$. Under this approach, the equity at risk is derived from the difference between residential property's value upon completion, and the total loans provided by the banks for the project.

Approach 3: $\frac{(Total \ Costs \ of \ the \ Project \ - Total \ Loans)}{Property \ Value \ upon \ Completion}$. Under this approach, the equity at risk is derived from the difference between the total estimated costs of the construction of the residential property, and the total loans provided by the banks for the project.

Approach 4: $\frac{(Obligor \ Contributed \ Equity)}{Property \ Value \ upon \ Completion}$. Under this approach, the obligor contributed equity is defined as the investments made by the obligor into the immovable property that the obligor has made, and, if any, conveys for the obligor only a residual claim on the cash flows generated by the ADC project that is in particular subordinated to any claim the institution might have from the provided financing, in the form of one of the following or a combination thereof:

a) Cash invested in the project and segregated from other assets of the obligor, available to cover for the projected cost of the project, measured in the currency of the financing for the obligor and at the moment of the calculation of capital requirements;

b) Subsidies and grants already invested to cover the incurred costs of the project or segregated from other assets of the obligor available to cover the projected cost of the project, measured in the currency of the financing for the obligor and at the moment of the calculation of capital requirements;

c) Unencumbered readily marketable assets directly linked to the project and available to cover the projected cost of the project, measured in the currency of the financing for the obligor and as the market value of these assets at the moment of calculation of capital requirements;

d) Expenses for development or construction, paid out-of-pocket by the obligor in direct connection to the project, measured in the currency of the financing for the obligor and at the moment of the calculation of capital requirements;

e) Land or improvements, paid out-of-pocket or already owned by the obligor, in direct connection to the project, measured in the currency of the financing for the obligor and at the market value at the moment of contribution of the obligor into the project.

Assessment of the options and the preferred option(s)

The definition of substantial cash deposit:

a. With regards to the definition of the metric to measure the substantial cash deposit, the EBA opted for the simpler option in order to ease interpretation, implementation, and effectiveness in establishing a linear relationship between the sale price and the significance of the cash deposit. Therefore, the preferred option is option 1: Based on a simple relative ratio.

b. The EBA has calibrated the level of the cash deposit such that they exceed the current market practices in order to justify the significant lowering of the own funds requirements. Therefore, the preferred option is Option 2, which follows a risk-based calibration approach.

c. To define the term “financed in an equivalent manner” the EBA has opted for a strict definition as opposed to a broader definition as the latter would imply allowing for mechanisms that are less appropriate from a risk perspective. Therefore, the preferred option is Option 1: restrictive definition.

The definition of significant number of contracts: The option of measuring the significant number of sale contracts using a weighted number based on the sales price (sales price of the contracts signed over sales price of all the potential contracts) or based on a simple number (number of contracts signed over the total number of potential contracts) are the simpler options and would allow for a simple understanding and calculation of the metric. However, they are not adequate measures to reflect the risk perspective as the risk arises from the amount guaranteed by the bank, in other words, the size of the credit facility. Using a ratio based on the size of the credit facility (sales price of the contracts signed over the credit facility including the drawn amount and undrawn amount, granted to the borrower to finance the ADC project) would allow understanding what would be the means that could be obtained from the sale to repay the credit facility. Therefore, with regards to sale contracts the preferred option is option 1: credit facility based. However, for lease contracts there is not a sale price. Therefore, for lease contracts the simplest approach is considered the beneficial solution. Therefore, with regard to lease contracts the preferred option is option 3: simple number.

To define the threshold for determining when the amount of obligor contributed equity can be considered appropriate, the EBA has explored 4 approaches which were mentioned previously (refer to C). When defining such threshold one point that had to be clarified was the definition of obligor contributed equity among approaches. Under Approach 1, the obligor contributed equity is a direct observation, based on some ‘accounting’ figures. Under Approach 2, the equity at risk is derived from the difference between residential property's value upon completion, and the total loans provided by the banks for the project. Approach 2 is similar to Approach 3 (explained below in this paragraph), but de facto considers the expected profit from the project once it is sold as equity. This would hence not relate to a form of pre-cash payment engaged by shareholders before the project starts. It can also be noted that, even if the value used for the determination of the property value upon completion is a prudent one (in line with Article 229 (1) CRR), this is unlikely to remove the total expected profits from the project. Approach 3 is trying to enhance Approach 2, by removing the profits. It has however the drawback that it relies on an estimate (the total costs), and this estimate cannot be “prudent” (as a conservative estimate of costs leads to a higher estimate of equity). It is in particular incorporating “upcoming” equity and not only already contributed equity (i.e., it is the case where the total estimated costs have not yet been fully financed, for instance where the cash payment from the developer into a dedicated SPV has not been made yet but is only planned to be). Approach 4 focuses on defining the various forms in which obligor-contributed equity can manifest itself. This approach considers real economic values of tangible assets, monetary outlays, and cash provided for specific projects. Approach 4 aims to address issues seen in Approaches 2 and 3 where a proxy is calculated to approximate the equity amount, and it provides clear segregation of equity for specific projects in comparison to Approach 1. For the considerations mentioned above, it has been chosen to adopt Approach 4.

To assess the impact of the choices made by the EBA in specifying the conditions outlined in Article 126a(2), the EBA conducted a data collection exercise. Banks were asked to apply a predefined set of conditions and identify the share of exposures eligible for the preferential 100% risk weight (RW).

Due to the timing of the data collection, these conditions were specified before all relevant discussions and industry consultations had taken place. As a result, the final conditions outlined in these guidelines differ[4] slightly from those used in the data collection. However, the EBA considers these differences to be minor and believes the data collection results provide a reasonable approximation of the guidelines' impact. The results[5] indicate that 32% of total ADC exposures meet the conditions set out in Article 126a(2), considering relevant clarifications. These exposures would benefit from the preferential 100% risk weight, leading to a 10.6% reduction in risk-weighted assets (RWAs) associated with ADC exposures compared to a scenario where no ADC exposures receive preferential treatment.

[4] The main differences between the conditions outlined in these guidelines and those used in the data collection are:

1. **Obligor-Contributed Equity:** The guidelines specify a 25% threshold of the real estate's property value upon completion, instead of the 35% used in the data collection.
2. **Financing Ensured in an Equivalent Manner:** The guidelines include two additional conditions for compliance with this requirement. Specifically, the following two criteria were not considered when defining "financing ensured in an equivalent manner" for the data collection purposes:
a) The obligation for funds to be subject to forfeiture if the pre-sale or pre-lease contract is terminated.
b) The requirement that instalments or segregated cash amounts must be substantial, in accordance with the ratios set out in paragraphs 10 and 11 of these guidelines for pre-sale and pre-lease contracts, respectively.

[5] Results based on December 2023 reference date.

Summary of responses to the consultation and the EBA's analysis

Summary of responses received	EBA analysis	Amendments to the proposals
Responses to questions in Consultation Paper EBA/CP/2024/08		
Q1: What is the materiality of the pre-sale and pre-lease contracts that would not have the expected characteristics of legally binding contract?		
Most of the respondents stated that, when they are used, pre-sale and pre-lease contracts have the expected characteristics of a legally binding contract as defined by the consultation paper. However, several jurisdictions do not use any pre-sale or pre-lease contracts, and in particular the industry notes that pre-lease contracts are very rare across Europe and in some countries, even prohibited by law. Hence, the CRR proposal for a reduced risk weight on residential pre-lease subset would not apply in some jurisdictions. Some respondents requested general clarification on the scope of application of the cash deposit requirement, i.e. that it applies solely to pre-sale/pre-lease contracts. Some respondents also asked for a proposed definition of pre-sale/pre-lease contract, because in some jurisdictions there is no clear difference between an agreement made in the precontractual phase and the final agreement. Specifically, one respondent believed that the distinction between "pre-sale" and "purchase" contracts was unclear, because the cash deposit is forfeited in both cases. Last, the industry requested to further clarify the "legally binding", and advocated in favor of flexible interpretation, such that it includes cases where there are: a) Concurring declarations of intent (offer and acceptance) regarding performance and consideration (in particular the object of purchase or rental as well as the purchase price and amount of rent).	According to the comments received, generally, the pre-sale and pre-lease contracts have the expected characteristics of a legally binding contract as defined by the consultation paper, so the pre-sale and pre-lease contracts that would not have the expected characteristics of legally binding contract does not seem, a priori, an issue. The scope of application of the cash deposit requirement as per Article 126a is limited to pre-sale and pre-lease contracts). On definition of pre-sale and pre-lease contract versus sale and lease contract, it has been clarified in the B&R that that the specification of the characteristics of these contracts is beyond the scope of these guidelines, but the legally binding pre-sale, sale, pre-lease, and lease contracts should be interpreted in line with the meaning and sense of the applicable national legislation of the country where the contract is legally binding.	(Paragraph 1.1 in B&R) In addition to the condition of considering only pre-sale and pre-lease contracts for which the purchaser or tenant has made a substantial cash deposit which is subject to forfeiture if the contract is terminated, the CRR also further clarifies that the contracts to be considered should be legally binding. In this context, it may be useful to consider how specific contracts within an

Summary of responses received	EBA analysis	Amendments to the proposals
b) Preliminary agreements and letters of intent, which, although not fully legally enforceable, often carry substantial economic weight and indicate serious commitment. c) Statutory or customary contractual termination options as well as statutory warranty claims, for instance withdrawal rights foreseen by law.	On the clarifications related to the legally binding requirements, the pre-sale and pre-lease contracts are expected to have the possibility for the buyer or tenant to terminate the contract instead of signing it, but this possibility may not exist or may be mandatory to introduce it. Therefore, the examples provided by the industry could only be considered valid, if they contain all the information as expected for the pre-sale contracts, and if they include a cash deposit requirement subject to forfeiture. In particular, this last aspect of “subject to forfeiture” comes directly from the L1 text, which explicitly specifies in 126a (2) (a) that the substantial cash deposit must be subject to forfeiture. Some jurisdictions do not use pre-sale and pre-lease contracts, but usually have other safeguards for contracts. This issue will be addressed later in the section “finance ensured in an equivalent manner”. Thus, in these cases, only legally binding sale or lease contracts shall be used to compute for the significant portion of contracts ratio as it is set out in the first condition of the Article 126a (2) CRR III.	EU jurisdiction align with the broader categories of sale/pre-sale or lease/pre-lease contracts, taking into account the applicable national legislation of the country where the sale contract is legally binding. National Competent Authorities could, if necessary, provide further clarification on this matter. (Paragraph 1.3 in B&R) It should be noted that the specification of the characteristics of these contracts is beyond the scope of these guidelines, but the legally binding pre-sale, sale, pre-lease, and lease contracts should be interpreted in line with the meaning and

Summary of responses received	EBA analysis	Amendments to the proposals
		sense of the applicable national legislation of the country where the contract is legally binding.
Q2: Do you agree with the approach proposed to specify the term "substantial cash deposit"? **Q3: Do you consider the 10% ratio to be appropriate for the determination of the ADC exposures benefiting from the lower risk weight?** **Q4: Do you have any concerns with applying a single ratio to all ADC projects? Are there any practical options the EBA should consider setting the ratio in a more granular way (e.g., threshold subject to case-by-case adjustments for either insufficient incentives or for non-enforceability of sufficient incentives but floored at potential market price deterioration over the relevant period) keeping in mind the simplicity of the Standardised Approach and the level playing field across institutions? If yes, please elaborate on these options in detail.**		
Half of the respondents have given a positive answer to the question Q2 about the ratio "substantial cash deposit". On the level of the threshold (question 3), less than a third of the respondents answered affirmatively to the question. The main proposal is to lower the ratio from 10% to 5%. Regarding question 4, almost half of the answers are negative to the question about whether there are any concerns with applying a single ratio to all ADC projects. The main concerns related to the possibility of having more risk sensitivity are the following: a) One of the arguments from the industry is that the proposed approach disregards consumer protection regulation. In several respondents, the 10% ratio goes beyond legal requirements of certain jurisdictions, e.g., France or Belgium -where cash deposits are limited to 5 % of the sale contracts. This would lead to an uneven playing field across the EU, because it hampers the possibility for some institutions to apply the 100% RW at an early stage of the project. The respondents also mentioned the definition of UCC which considers local regulations .	On the interaction with national consumer protection law that impose limits on the maximum amount that can be requested of the buyer, the EBA decided on the level of the ratio independently of them because consumer protection law and the prudential framework have different purposes would tend to go in opposite direction: 1. the consumer protection law ensures no 'unreasonable' cash deposit requirements in relation to its level of certainty, hence the lower the buyer's or the seller's certainty, the lower the cash deposit requirement. 2. the prudential framework should rather ensure a higher level of cash deposit to compensate for a lack of certainty from the	No change in the methodology. No change on the level of this threshold.

Summary of responses received	EBA analysis	Amendments to the proposals
b) Some respondents argued that the threshold could fit for some jurisdictions but not for others, so it is important to consider national specificities. c) Some jurisdictions may have chosen a low cash deposit rate given other risk-reducing mechanisms. In that sense, it is suggested considering additional safeguards like bank guarantees, insurance products, or phased financing to reduce the need for large cash deposits. In any case, these alternative forms will be addressed in the section related to "financing ensured in an equivalent manner". d) Another respondent proposes a more flexible, tiered approach where the definition of "substantial" varies by project type, size, market and regional economic conditions and argues that this flexibility would help accommodate different market dynamics and developer capacities, particularly benefiting smaller developers who may be disproportionately affected by stringent requirements. One respondent mentioned the upcoming difficulties to be faced with the development of accommodation properties such as hotels. e) Another respondent contested the influence of the cash deposit on the rate of withdrawal of final purchasers, since the amount of cash deposits is pre-established by consumer protection law and is hence identical within a jurisdiction. One respondent has proposed to relate substantial deposit to fixed construction prices instead of fixed sale prices. Some respondents requested clarifications on: a) Application of the ratio CD/SP on a contract-by-contract basis or on an aggregated level. This would be relevant in the case that the cash deposit paid is in absolute amount irrespective the sales price (common in Sweden). b) Whether there are any criteria that need to be fulfilled concerning the timing of the payment of the cash deposit. The market standard in one jurisdiction is that the cash deposit is paid in several steps and it will seldom amount to 10 % of the sales price.	buyer's side. The lower the buyer's certainty is, the higher the cash deposit requirement should be. It is also noted that there is no contradiction per se between the two frameworks. In the case where the consumer protection laws offer a high level of protection by limiting the amount of cash deposit requirement, this is naturally translated, all other things being equal, into a higher risk from the obligor's perspective, and should therefore be associated with a higher RW on the exposure. On the possibility to introduce more risk sensitivity in the approach: The EBA assessed the possibility of having adjusted ratios by banks considering national specificities, and also to consider scenarios where the cash deposit may not be enforceable due to legal or practical impediments. But this option was disregarded due to difficulties to operationalize, considering that the Guidelines are within the scope of institutions applying standardized approach. Also, it was considered that this option would have led to high heterogeneity between jurisdictions. On the possibility to combine the cash deposit requirements with other safeguard, this possibility is further discussed in the section on "financed in an equivalent manner". Regarding the development of accommodation properties such as hotels developments is out of	

Summary of responses received	EBA analysis	Amendments to the proposals
	the scope of this mandate as this relates to commercial real estate (while the mandate is specifically on residential real estate). On application of the ratio individually or on an aggregated basis, according to paragraph 10 of the CP, the cash deposit has to be made for a legally binding pre-sale contract. From a prudential perspective, it is necessary that all the contracts have the minimum requirements stated in the Guidelines. In other words, no compensation should be recognized between contracts with higher than the minimum substantial cash deposit and contracts with deposits below the threshold. This is because the cash deposit requirement is set to ensure reasonable commitment of the buyer to ultimately buy the property (i.e. the cash deposit itself is not a risk reduction tool). On the possibility of adopting an absolute cash deposit along with a relative percentage, no additional arguments have been provided by the respondents. In any case, even if the amount of the cash deposit requirement in the market practices is not determined in relation to the sale price (e.g. it is a fixed amount), for the purpose of prudential requirements, it can always be expressed as a function of a sale price. On the denominator of the ratio, the sale price was selected as the denominator of the ratio because it is the same way to demonstrate the commitment of the buyer to convert pre-sale contract into a sale contract. The sale price is	

Summary of responses received	EBA analysis	Amendments to the proposals
	easy to obtain and objective. Also, it seems difficult that construction costs can be assigned separately for each contract. Other options were assessed for this ratio as a combination of an absolute cash deposit with the relative percentage but were disregarded because it did not work well in contracts with extreme prices. On the clarification of the timing of the payments of the cash deposits, it is required to comply with the thresholds at the moment of the calculation of own funds requirements. Given the above, along with the data collected from the QIS template, which did not provide strong evidence in favor of lowering the threshold, it has been decided to maintain the level introduced in the CP. Further, with the current available data, the current thresholds do not seem to introduce an unjustified distortion between pre-sale and pre-lease contracts.	

Q5: Do you see any drawbacks in adopting the selected option? In case you prefer the alternative option, could you provide the rationale and an example of the calculation and estimation of the net present value of total payments?

Q6: Are there any other practices that should be considered by the EBA?

Q7: Do you have any concerns with applying a single threshold to all ADC projects? Are there any practical options the EBA should consider setting the threshold in a more granular way, keeping in mind the simplicity of the Standardised Approach and the level playing field across institutions? If yes, please elaborate these options in detail.

Q8: Is the relation between the “substantial” cash deposit required for a pre -sale contract and the “substantial” cash deposit required for a pre -lease contract appropriate from your perspective? If, not, please explain why and how this relationship should be adjusted.

Summary of responses received	EBA analysis	Amendments to the proposals
As it is mentioned previously, pre-lease is not a typical practice in the EU and in some jurisdictions is simply prohibited by law. In this sense several respondents pointed out that in the case of pre-lease and lease binding contracts, they do not see the case where individuals are going to pay 3 months in advance for renting a flat that is still under construction. This would be the case for pre-lease agreements for commercial shopping centers and offices, that are out of scope of this consultation and the mandate. Some comments were similar to the ones raised for pre-sale contracts: one respondent argued in favor of a more flexible approach that allows for adjustments based on real-time market feedback and economic conditions, another one asked to consider a lower percentage threshold for accommodation developments such as hotels. In any case, as for pre-sale contracts, most of the respondents state that, for the sake of simplicity, the same single threshold should apply to all ADC projects but, at the same time, they would like that the ratio covers all market practices, not only at EU level but also non-EU level. One respondent requested clarification in relation to the cases where not all rents are equal during the whole contract. Two respondents proposed that the level of “substantial cash deposit” requested for pre-lease contracts on the final monthly rent price should not exceed 100 %. Another proposal is to reduce it to 200%.	In relation to the case where not all rents are equal during the whole contract, the EBA considered the possibility to further clarify the guidelines, for instance by referring to the average monthly rent over the upcoming year. However, the added value of such clarifications appears limited, in particular in relation to the materiality of such cases, and the limited impact it is expected to have on the final amount of cash deposit requirement. Hence, for specific cases where the rent varies over time, the institution is expected to come up with a plausible estimate of the monthly rent. Given the above, along with the data collected from the QIS template, which did not provide strong evidence in favor of lowering the threshold, it has been decided to maintain the level introduced in the CP.	No change in the methodology. No change on the level of this threshold.
Q9: Do you agree with the approach of strict equivalence with respect to cash deposit proposed? Do you deem other forms equivalent to the cash deposit from a risk perspective? If yes, please explain.		
Whereas the majority of respondents did not raise concerns about the chosen option in the CP, the disapproving comments requested to consider CRM methods meeting the eligibility criteria according to Chapter 4 of Title II of Part Three of the CRR. More specifically, they requested to consider: a) FCP: broader financial instruments and securities as equivalents to cash deposits. It is argued that this inclusion would enhance liquidity options for developers and align risk management with modern financial practices.	Respondents primarily referred to personal guarantees, which fall under the category of unfunded credit protection (UFCP), advocating for their recognition as equivalent to cash deposits. However, UFCP presents three key deviations compared to the cash deposit requirement:	No change.

Summary of responses received	EBA analysis	Amendments to the proposals
b) UFCP: unfunded credit protection fulfilling the eligibility requirements for credit risk mitigation as specified in Articles 213 and 215 of the CRR could be acceptable, as long as they are granted by banks or other entities under equivalent supervision. This could include irrevocable payment guarantees issued by the buyer's bank and deposited with a trustee to secure the sale price of the residential unit. Another respondent sees the need for clarification of the term "segregated account".	- They involve additional credit risk, as the deposit may not be recoverable in the event of a default by the guarantor institution. - They may not impose a direct financial cost on the obligor, reducing the incentive to finalize the contract. - When irrevocable guarantees are charged back to the buyer, they effectively function as a fee payable upon withdrawal, which is not aligned with the "financed ensured in an equivalent manner" criteria. Regarding FCP, while there could be some scope for consideration, it was deemed of limited relevance, as most comments requesting changes focused on personal guarantees. As a result, EBA does not see the need for any changes in this matter.	
Q10: Do you agree in using two different options for pre-sale/sale and pre-lease/lease contracts? **Q11: Do you see any drawbacks related to the proposed options under paragraphs 14 to 16 of these Guidelines?**		
Most respondents consider that the level of the threshold to consider that legally binding contracts amount to a significant portion of total contracts has been set too high in the consultation paper (50%). A threshold of around 30%-40% is put forward as a preferred alternative more in line with market standards. Other respondents agree with the threshold proposed in the CP. Preferred option for designing the ratio (options 1/2/3/4) Concerning the methodology to assess whether legally binding contracts amount to a significant portion of total contracts, some respondents agreed with using two different options for pre-sale/sale (option 1) and pre-lease/lease contracts (option 3). However,	Empirical data, along with comparisons with other jurisdictions outside Europe, which are aligned with values around 50%, have not been sufficient to support a reduction in the thresholds.	No change in the methodology. No change on the level of this threshold.

Summary of responses received	**EBA analysis**	**Amendments to the proposals**
other respondents did not understand the rationale for setting the ratios with different parameters for pre-sale/sale and pre-lease/lease and support using option 1 (i.e. the credit facility-based approach) for both pre-sale/sale and pre-lease/lease. One respondent also considers option 3 (i.e. the simple number approach) as appropriate to define the ratio in the case of pre-sale / sale contracts, in some markets, for which option 1 would not be appropriate. Technical comments on components of the ratio In order to also use option 1 (the credit facility-based approach) for pre-lease / lease contracts, some respondents proposed to base the numerator not on the sales price of the contracts signed but rather on the property value of units, since the property value can also be defined for lease contracts. Some respondents suggested using the size of housing unit living space (i.e. square meters) as a basis for the ratio for pre-lease / lease contracts, since in the current proposal (option 3), residential units of different sizes that are rented out are considered of equal value in the ratio. Regarding pre-lease and lease contracts, one respondent disagreed with option 3 because in its jurisdiction, lease contracts are only granted after completion so that the current ratio of option 3 is not relevant. The respondent suggested instead using a market-based approach for the assessment of the prospective occupancy rate by either looking at the vacancy rate for flats in a definable rental market which (defining the threshold of 5% as an indication that the required occupancy rate will be achieved) or assessing the percentage changes in prices for apartment buildings in the last one to three years (“market fluctuation concept”). One respondent believed that the concentration risk on the buyers of the housing units requires closer attention – since only one buyer (regardless of whether an individual investor or investment company) might buy several units within the same project, in which case the 100 % preferential risk weight should be supported – according to the respondent – by additional safeguards, like a positive creditworthiness of such a buyer.	As mentioned in the “Summary of responses received” column, a significant number portion of respondents expressed support for having two distinct options for pre-sale/sale contracts (Option 1: sale prices of sold units over the credit facility) and for pre-lease/lease contracts (Option 3: number of leased units over the total number of contracts). A smaller group of respondents favored harmonizing both ratios by using the property value as the numerator and the amount of the credit facility as the denominator for both sale/pre-sale and lease/pre-lease contracts, addressing the clear issue of the unavailability of sale prices for lease/pre-lease contracts. EBA explored this option but considered it preferable to maintain the stability of the current framework, particularly as this alternative would likely increase the burden on banks, a factor respondents may have underestimated. Specifically, estimating the property value for each unit within an ADC project could prove burdensome if the valuation principles under CRR Article 229(1) were to be applied to each unit individually. By contrast, under the current approach, institutions are only required to apply Article 229(1) to the overall building property value financed by the ADC exposure, and not to the value of each individual unit within the building.	

<table>
<tr><th>Summary of responses received</th><th>EBA analysis</th><th>Amendments to the proposals</th></tr>
<tr><td colspan="3"> Q12: What is the materiality of ADC projects with mixed use foreseen? How are these projects structured and whether the proposed options raise any particular issues to be applied in practice? Q13: Do you agree with the pros and cons on the different methods explained above? Are there any further issues that the EBA should consider? Q14: Do you agree with the use of method B1 for the aggregation of pre-sale/sale contracts with pre-lease/lease contracts? Can method B1 be applied in practice using option 1 for pre-sale/sale contracts and option 3 for pre-lease/lease contracts? Is it possible to separately identify the amount of the ADC exposure used for financing housing units for sale or for lease? Q15: Are there any other combinations of the options and methods considered by the EBA for aggregating pre-sale/sale contracts and/or pre-lease/lease contracts that are preferable? Q16: Which alternative should be considered for assessing whether, for a project where a mixed use is foreseen, the eligible pre-sale and pre-lease/lease contracts are a significant portion of total contracts? </td></tr>
<tr><td> Most respondents suggest that the materiality of ADC projects with mixed use foreseen (both sale and lease) is very limited and did not submit comments on the associated questions. It is also suggested that detailed EBA guidance on this topic is not warranted. Among the other responses, three respondents indicate that usually there are separate credit facilities for the different parts of a mixed used project and that the ratios for those should be calculated separately. The maturity of the loans is different, typically in the range of 3 to 5 years for the sales part, and up to 30 years for the lease part. In particular, two respondents seek clarification on the application of paragraph 17 in case of mixed-use projects financed by separate credit facilities. It is the respondent view that in this case the general treatment of paragraph 16 applies for each facility instead of paragraph 17. One respondent proposes using a splitting method, even in case of a single loan financing a mixed use project. The loan would be considered as two separate projects and risk weights be calculated accordingly, i.e. part for sales and part for leases. One respondent - although mentioning that projects with mixed use are not material in its jurisdiction – disagrees with the proposed method B1 arguing that the approach is excessively conservative, as acknowledge in the CP. The respondent does not provide clear alternative preferences. </td><td> Regarding the request for clarification on the treatment of mixed-use projects with separate facilities for the sales part and the lease part, an amendment to the guidelines is considered - allowing the calculation of two separate ratios at facility level, provided it can be ensured that the repayment of the sales facility (respectively leases facility) is only based on the sales (respectively leases) of the unit. Note that such treatment would imply that Art. 126a and the preferential 100% RW can be applied at facility level, instead of obligor or project level. Regarding the calculation of the ratios in the case where a single credit facility covers a mixed-use project is clarified, the final report introduces the clarification that for single facilities financing mixed-use properties, the denominator of the ratio must reflect only the portion allocated to the sales component. </td><td> (additional paragraph 18 in the GLs) Where the intended use of the property is partly for sale and partly for lease and where the institution grants separate facilities for the sales part and for the lease part, the ADC preferential risk-weight can be applied at facility level provided it can be ensured that the repayment of the sales facility (respectively leases </td></tr>
</table>

Summary of responses received	EBA analysis	Amendments to the proposals
Two other respondents argue for using a single ratio based on the area resulting from the sum of the already sold and already leased units in relation to the total area of the construction project. Some respondents consider method B1 as too conservative and rather favour method B2, involving in the second step aggregating the sales and leases threshold. Other respondents suggest a simplified approach that consists in determining the main intended use of the property (i.e. prevalence of sales or leases), in terms of total number of units or in terms of value of the properties. The ratio defined in paragraphs 14 to 16 for non-mixed use projects would then be used depending on the prevalence of sales or leases in the mixed use project.		facility) is only based on the sales (respectively leases) of the units. For this purpose, the institution shall calculate two separate ratios at facility level for the assessment of significant portion of total contracts. (requirement at the end of paragraph 15) For the purposes of calculating the ratio referred to in paragraph 14, in the case where a single credit facility finances a property whose intended use is partly for sale and partly for lease, the denominator must only reflect the portion of the credit facility that finances the construction intended for sale.

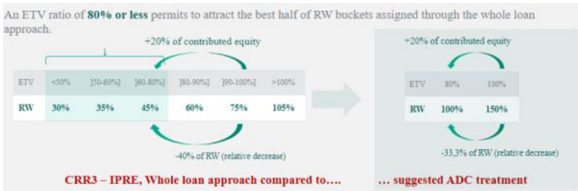
Summary of responses received	EBA analysis	Amendments to the proposals
Q17: Do you foresee any practical impediments to include the verification that the developer only has a residual claim on the property in the underwriting standards? How could this "residual claim" feature be ensured in practice in your jurisdiction (e.g., SPV, pledge, mortgages, …)? Please provide reasoning, taking into account market practices and underwriting standards if you think that an adjustment of the EBA's definition of obligor contributed equity is necessary.		
The comments received on this question are limited. It does not appear that this aspect is a major concern for the associations. However, two associations have raised the issue that one of the possibilities for "obligor contributes equity" may be subsidies that are not paid out (as they depend on construction progress) but are granted by the subsidy authority. Finally, one association proposes replacing the term "residual claim" in paragraph 19 with "subordinated".	While in paragraph 19 (b) it could be considered including subsidies "granted but not paid out" (a topic that will be addressed in question 19), it is unclear how the requirement of a residual claim may impact this specific aspect. Regarding the proposal to replace "residual claim" with "subordinated", the differences from a legal standpoint are not entirely clear, as both terms imply that the obligor's claims are not primary. Furthermore, paragraph 19 further specifies that the claim is subordinated, so in this case, it does not seem necessary to amend the paragraph.	No change.
Q18: What are your views on the proposed threshold for determining the appropriateness of the amount of obligor-contributed equity? Please provide reasoning, taking into account market practices and underwriting standards if you think that an adjustment of the EBA's proposal is necessary. **Q20: Do you see any rationale for setting different threshold levels?**		
Unanimously, all associations expressed serious concerns regarding the equity-at-risk threshold of 35%, stating that current market practices are around 10%. In this regard, some associations have requested reducing the threshold from 35% to 10% to reflect the more common business practices across Europe.	The approach proposed by the industry comparing the reduction in RW in the loan splitting approach would try to have consistency in the framework for residential real estate exposures. This would result in setting the	The threshold for equity at risk has changed from 35% to 25%.

Summary of responses received

Other associations, however, have proposed setting the threshold at 20% for two main reasons:

- It would still be higher than the average level of equity required in most European countries.

- By analogy with IPRE loans under the whole loan approach (Article 125(2) CRR3) that shares similar features in terms of approach (i.e. calibration of RW depending on ETV: 1 -"% obligor-contributed equity"), a 20% obligor-contributed-equity is deemed significant and appropriate to reach a 40% relative RW decrease (from 75% for an ETV =100% to 45% for an ETV=80% - see figure below).



Regarding the second point, in particular the industry claims the threshold level to be set in the context of ADC exposure would lead to a less significant mitigation of a 33% relative decrease (from 150% to 100% RW) as shown in the picture above.

Based on the above elements, some associations believe that a level of obligor-contributed equity of 20% would be significant enough and appropriate since ensuring proportionality to the IPRE treatment while taking into account the additional construction risk through the lower extent of risk weight reduction. For completeness,

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threshold equal to 20% obligor-contributed-equity threshold, to which an additional layer of prudentiality can be applied, bringing it to 25%. Adopting this approach and lowering the Equity at Risk threshold from 35% to 25% would also align with the practices observed in other jurisdictions outside the EU. In particular, Singapour has a threshold equal to 20%, while Canada and Australia equal to 25%.

Amendments to the proposals

Summary of responses received	EBA analysis	Amendments to the proposals
the other associations that provided comments requested a reduction of the threshold from 35% to 10% as indicated at the beginning of the section.		
Q19: Do you agree to use Approach 4 for identifying the appropriate amount of obligor contributed equity? If not, what alternative options should the EBA consider?		
During the Public Hearing, some associations had already pointed out that the expected profits were included in the denominator of the ratio used to calculate the obligor's contributed equity, but not in the numerator. The associations would prefer a ratio entirely based on the project cost, as this is what is financed by the banks. However, since the denominator is dictated by the Level 1 text, some of them express a preference for a ratio like that in Approach 2, which also accounts for the profit in the numerator. Other respondents have a slight preference for Approach 1. Other associations, while highlighting the issue of including profits only in the denominator, appreciated the approach for determining the forms of equity, stating that Approach 4 seems to be the most consistent with the CRR text and would allow (based on the guidelines provided in the consultation paper) for a more accurate assessment of the obligor-contributed equity component. Some associations also strongly recommend the inclusion as form of equity of any available sureties, i.e. all valuable/liquid assets/collateral (such as recourse/cash, guarantees, assessable land charge on other properties) as a source of equity in the "numerator". In this regard, they claim that appropriate levels of conservatism can still be ensured by applying common criteria on the value and realisation, e.g. a certain minimum creditworthiness of a guarantor. Another element that emerged from the feedback is that in some jurisdictions, the most common scenario is where banks finance only the land acquisition by the real estate	EBA acknowledged the industry's concerns regarding the inclusion of profits in the denominator (and not in the numerator), which is mandated by the L1 text and therefore cannot be replaced in the Guidelines with the total financing cost of the real estate project. However, it invites consideration of the different impact of including profits in the denominator versus the numerator with the following example: **Example** Baseline Scenario: With an equity of 20 and a property value upon completion of 100, the threshold is: Threshold= 20/100 = 20% Second Scenario: Now, assuming that the property value of 100 includes a profit of 20, we can calculate two alternate ratios: • Excluding the profit from the denominator: Adjusting the denominator to 80 (100 - 20 profit): Threshold= 20/80 = 25%.	(Chapter 5 – Obligor contributed equity new paragraph 21) Obligor-contributed equity is the total amount of investments qualified according to paragraph 20 that the obligor has already contributed, reduced by any excess costs currently expected for completing the immovable property. Excess costs are quantified by the difference, if positive, between total costs for completing the immovable property, both already incurred and still expected costs, and the property value upon completion

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developer. In such a situation, there is no meaningful economic ground to consider as a risk mitigant an obligor-contributed equity ratio which is based on the whole property value upon completion since the loan does not totally finance the entire property value. In this regard, associations are of the opinion that the EBA should clarify that in the context of land financing only, the property value upon completion should be understood as the land value.	• Including the profit in the numerator and in the denominator: Threshold= 40/100 = 40%. This illustrates how the placement of profits (in the numerator versus the denominator) significantly impacts the final ratio, highlighting a more favorable leverage ratio when profit is added to the numerator, compared to when it remains in the denominator. For this reason, EBA is reluctant to introduce expected profit in the numerator of the ratio. In any case, a modification is included to add unexpected construction costs in the ratio, ensuring that the equity is not effectively eroded by the difference between the value upon completion and the increase in construction costs. Regarding the point on the existence of financing solely for the property, the EBA acknowledges the concern in the case it is financed only the land acquisition. However, if the construction on the land is incomplete and the land's value ends up being less than its original "naked" (i.e. undeveloped value), this presents significant counter-risks to the bank's recovery potential. From a risk perspective, it's important to consider where the money for repaying the loan will come from. If the land's value has decreased due to incomplete construction, the developer's ability to generate cash flow (liquidating the land) may be compromised. For the above consideration, EBA	measured as required by Article 229(1) CRR, i.e. as if the immovable property was already completed, taking into account the life of the loan and the potential for the current market value for such completed property to be significantly above the value that would be sustainable over the life of the loan. For the purposes of this definition, "excess costs" refers to the amount by which the total costs for completing the immovable property exceed the property value upon completion, and not the amount by which the costs exceed the estimated costs at origination.

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	rejected the proposal to refer to the land in the case the lending institution finances solely and exclusively the land acquisition, since what matter is the total equity contribution over the (total) value of the project (i.e. property value upon completion).	
Q21: Do you agree with the adjusted criteria for public housing or not-for-profit entities?		
More than half of the respondents do not agree with the proposed consideration of social housing in the CP. The contributions suggest the following changes: a) Reduce the condition of obligor contributed equity threshold; b) Consider the pre-sales and sales contracts; c) Reduce the requirement for a significant portion of total contracts currently at 75%; d) Recognize other conditions than the ones provided in Level 1 text for the 100% risk weight; e) Exempt social housing financing from the scope of the ADC exposure definition. As regards point (a) on the requirement of obligor contributed equity, some respondents further proposed to decrease the threshold to 15%. This would reflect the very low vacancy risk and the capacity of the social housing obligors to fulfil the loans also from other already fully funded (repaid) properties (consolidated economic model without SPVs). Some respondents also state that this reduced threshold would be underpinned by the US Basel III implementation draft, which provides a 15 % threshold.	At first, the Basel III standards as well as the European Level 1 Text does not give clear evidence that social housing financing was intended to be excluded from the ADC framework. In the CRR III, Art 124 (1) and (2) commences with cutting-off any ADC exposures (i.e. “A non-ADC exposure…”). Furthermore, the mandate in Art 126a CRR III would not be necessary if institutions’ lending to public housing or not-for-profit entities across the Union that are regulated by law and that exist to serve social purposes and to offer tenants long-term housing were not covered by the ADC exposure framework in the first place. Even if we were to assume that social housing was intended to be excluded from the ADC framework, the applicable risk weight would be at the same 150% level. This is because Art 124 (3) a) i) CRR III would not be fulfilled and Art 124 (1) b) CRR III would apply (as the exposure would be deemed as income producing and no exemption like in Art 124 (2) a) ii) (3) and (4) CRR III exists). Finally, under Art 124 (1) CRR III, no privileged treatment is provided, meaning that	(Chapter 6 – Consideration of the specificities of lending to public housing or not-for-profit entities) 22. ADC exposures to public housing or not-for profit entities across the Union that are regulated by law and that exist to serve social purposes and to offer tenants long-term housing should be subject to the treatment referred to in paragraph 23 where both of the following conditions are met:

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Continuing on point (a), a few respondents also reiterated that in general the usual practice is to ask for an equity ratio of around 10% of total costs, arguing then for a lower threshold of obligor contributed equity of 20%. This would be based on an analogy with the IPRE framework, where the presence of 20 % equity leads to a relative reduction in risk-weigh of 40% (from 75 % to 45%). Similarly, the presence of a 20 % contributed equity in the ADC framework would lead to a lower relative decrease in risk weight of 33% (from 150% to 100%). This argumentation is the same mentioned for the general framework as well. Moreover, continuing on point (a), it was also raised by one respondent that, in general, the combination of the two conditions according to Art 126a (2) a) CRR III (i.e. the degree of pre-utilization) and according to Art 126a (2) b) CRR III (i.e. the level of equity) should be considered to allow the risk weight of 100%. Concerning the point (b) on the inclusion of pre-sale and sale contracts in the social housing framework, some respondents argued about broadening it to cover also pre-sale/sale contracts as public housing/not-for-profit entities sales were market practice. This would be supported by the fact that many jurisdictions do not have pre-lease contracts, making it in practice more difficult to reach the threshold. Concerning point (c) on the requirement of a significant portion of contracts, many respondents highlight that they do not understand the reasoning behind the higher threshold. In this regard, a general threshold of 30% is deemed to reflect better market practices for ADC exposures, which would also apply to social housing. One respondent also suggested to count rented space in square meters instead of using the number of contracts.	there would be no possibility of reducing the applicable risk-weight. Against this background and the view presented in point (e), the Level 1 Text does not include a mandate to any interpretation covering a full exemption of social housing financing from the ADC exposure framework, The Level 1 text does provide a consideration, according to which the Guidelines should take into account “the specificities of institutions’ lending to public housing or not-for-profit entities across the Union that are regulated by law and that exist to serve social purposes and to offer tenants long-term housing”. In this regard, the EBA acknowledges that those public housing and not-for-profit entities operate under different risk conditions compared to speculative property developers. The initial approach of EBA to tackle this part of the mandate was to stick to the conditions that are imposed for the lower risk weight for any other residential real estate ADC exposure and elaborate risk adequate facilitation. In appreciation of the consultation process, a more differentiated approach may be needed to reflect the particular conditions of the social housing markets. Following the intention of the Level 1 text, the final Guidelines develop adapted criteria for the social housing framework, reflecting from a credit risk perspective their very high marketability. On substance, this social housing	a. The intended use of the property is exclusively for lease; b. The property being financed is subject to a regulation specifying the eligibility to qualify for social/public housing, including criteria for applicants in relation to their income, their family size, their residency status, and requirements for the construction, including the size of each unit or being barrier-free. 23. For the ADC exposures mentioned in paragraph 22, the requirement for a significant portion of total contracts, as outlined in Article 126a(2)(a) of the CRR, should be considered fulfilled if, for the project under

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Regarding point (d) on the recognition of other conditions than legally binding pre-contracts/contracts and equity at risk stated in the Level 1 text, some respondents suggest considering other social-housing specific factors. More precisely, they suggest: • A larger view of the requirement of "legally binding" pre-contract/contract. Some respondents suggest for instance to recognize waiting lists/subscription lists, without cash deposits, given that the binding contracts will be signed only in the last months of the construction (e.g. 6 months prior to completion). Other respondents note that in many jurisdictions pre-sale contracts do not exist, or that it is not legally possible to rent to a natural person until the property is completed. In all cases, this larger view would be supported from a risk perspective by the fact that the demand for social housing generally exceeds the supply. For instance, one respondent noted that, in their jurisdictions, the number of applications for social housing in 2022 was more than 4 times higher than the number of housing units available for rent during the year. • A prudential recognition of the relevant binding national legislative or statutory regulations for social/public housing companies/associations. In some jurisdictions, there is a specific law for non-for-profit entities. These entities are allowed to perform only specific business, and are strictly monitored by supervisory authority from the federal state where they are registered. For instance, social assets may only be acquired or managed by another social housing organization, and the shares of these organizations are regulated (transfer limits, dividends in reserves, etc.). Moreover, there are in some jurisdiction control bodies, which may conduct on-site inspections or even fit and proper assessments. Finally, one jurisdiction also has a guarantee fund, with the explicit aim to insure solvency of the social housing entities.	financing approach would provide adjusted criterion for both the "significant portion of total contracts" and the "equity at risk" criterion, provided that lending is indeed to entities "that are regulated by law" as provided by Article 126a(3). Against this background, EBA is proposing the following approach: - Social housing projects can benefit from a 100% RW when the number of applicants for social housing units exceeds the number of units available for lease at the project level, or if not available, at municipality level (via the condition "significant" share of sale contract); - Otherwise, social housing projects can still benefit from the 100% RW via the usual thresholds. In this context, the condition for the equity at risk is adjusted in two ways: the threshold is lowered by 5% compared to the general framework, and subsidies and grants committed (i.e. not already paid, as in the general framework) to the obligor for project costs are now allowed in the equity calculation.	consideration and for each type of social housing units in the project, the number of applicants exceeds the number of social housing units available for lease. Where the number of applicants is not available for a specific project, but is available at municipality level, the comparison between the number of applicants for each type of social housing units and the number of social housing units available for lease can be performed at municipality level. 24. For the ADC exposures referred to in paragraph 22, the appropriate amount of obligor-contributed equity for the purposes of Article 126a(2), point (b), of the CRR should be set according to

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Lastly, considering point (e), several responses put forward that the definition of ADC exposures was not meant to cover social housing financing in the first place and underpin this with two sources. The first argument is based on the Basel III standards (BCBS 424) – transposed into CRR III – which exclude public housing companies and not-for profit associations in general from the IPRE treatment, irrespective of the property's completion status. Therefore, it could be derived that social housing exposures were also not intended to be treated under the even stricter ADC exposure treatment. The consequence of those arguments is not presented explicitly. Only one respondent argued that due to the reduced risk of social housing financing those should unconditionally fall under the reduced risk weight of 100%. The second is a reference to the introductory explanations of the European Commission in its Proposal of CRR III (2021/0342 COD) that the heightened risk of ADC exposures which are "due to the fact that the source of repayment at origination of the loan is either a planned, but uncertain sale of the property, or substantially uncertain cash flows" shall be addressed by introducing a new definition for loans to companies or special purpose vehicles financing ADC of any residential or commercial property. As social housing does not exhibit this level of uncertainty due to demand stability and even overdemand for their properties, the stricter treatment of ADC exposures is not necessary.		the requirements of the paragraphs 19 to 21 of these Guidelines, with the following adjustment: a. [Reducing the equity threshold]: the ratio of the amount of the obligor-contributed equity to the residential property's value upon completion referred to in paragraph 19 should be equal to or higher than 20%. b. [Allowing subsidies and grants committed to the obligor]: The subsidies and grants referred to in paragraph 20, point (b), also include the subsides and grants committed to the obligor in order to cover the incurred costs of the project, including subsidies

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		committed in the form of funds derived from state-backed, unsecured junior loans with preferential interest rates, as measured in the currency of the financing for the obligor and at the moment of the calculation of capital requirements.